

PUBLIC SERVICE COMMISSION

Docket No. 21-035-14

HEARING

August 23, 2021

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Hearing
August 23, 2021

1 BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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3 In the matter of the)Docket No. 21-035-14
4 Application of Rocky)
5 Mountain Power to Establish)
6 a Balancing Account for)
7 Pension Settlement)
8 Adjustments.)
9)
10)
11)
12)

13 PUBLIC SERVICE COMMISSION HEARING

14 Taken on Monday, August 23, 2021

15 at 10:00 A.M.

16 The Public Service Commission of Utah

17 160 East 300 South

18 4th Floor

19 Salt Lake City, Utah 84111

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21
22 Reported by: Kellie Peterson, RPR, CSR
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1 August 23, 2021 10:00 A.M.

2 P R O C E E D I N G S

3 COMMISSIONER LEVAR: We are here for Public
4 Service Commission hearing in Docket 21-035-14,
5 application of Rocky Mountain Power to establish a
6 balancing account for pension settlement adjustments.

7 Why don't we start with appearances for Rocky
8 Mountain Power?

9 MS. WEGENER: Emily Wegener for Rocky
10 Mountain Power, and with me, I have our witness, Steve
11 McDougal, and co-counsel, Stephanie Barber. And with me
12 in the back is Jana Saba and Joelle Stewart.

13 COMMISSIONER LEVAR: Okay. Thank you.

14 For the Division of Public Utilities?

15 MR. JETTER: Good morning, Justin Jetter,
16 with the Utah Attorney General's Office, and I'm here
17 this morning representing the Utah Division of Public
18 Utilities. With me at counsel table is division witness
19 Jeff Einfeldt.

20 COMMISSIONER LEVAR: Okay. Thank you.

21 Mr. Moore?

22 MR. MOORE: Robert Moore of the Attorney
23 General's Office, representing the Office of Consumer
24 Services. With me, who will be testifying today, is our
25 witness, Donna Ramas.

1 COMMISSIONER LEVAR: Okay. Thank you.

2 Mr. Russell?

3 MR. RUSSELL: Thank you. Phillip Russell,
4 representing the Utah Association of Energy Users. With
5 me in the hearing room is UEA's witness, Kevin Higgins.

6 COMMISSIONER LEVAR: Okay. Thank you.

7 Before we go to the first witness -- I mean,
8 Mr. Moore already addressed this issue with the
9 discussion of potential briefing that we will discuss at
10 the end of the hearing. But I also wanted to give the
11 attorneys the opportunity, if they choose, to verbally
12 address the difference between, well, what we were asked
13 by Rocky Mountain Power not to do in the reconsideration
14 phase of the rate case versus what we are being asked to
15 do now.

16 And if the attorneys would like to address
17 that, either at the beginning or at the end of the
18 hearing, we would invite that. However, if there's an
19 interest in briefings, that might also take precedence
20 over this.

21 So I'm assuming no one wants to address it at
22 the beginning of the hearing. Maybe we can just decide
23 whether to address it verbally or in briefs after the
24 hearing.

25 Is there anyone who would prefer to address

1 that particular legal issue at the outset? I'm not
2 seeing -- well, Mr. Russell, did you want to comment?

3 MR. RUSSELL: Yes, I guess so. I'm not
4 exactly sure what it is you're looking for, Mr. Chairman.
5 I do intend to raise an objection to a portion of the
6 company's pre-filed testimony, assuming that there are no
7 changes that would affect that testimony.

8 And it gets at the very issue that I think
9 you're inviting us to discuss now. And I am happy to do
10 it now, or we can wait until the company's witness is on
11 the stand. I don't have a preference as to when the
12 commission -- when we address what the commission -- the
13 issue that you're raising.

14 I guess we can do it now, if you'd like, but
15 it's going to come up at some point during the hearing, I
16 think, so maybe it would be more efficient to do it now.
17 I'm not sure.

18 COMMISSIONER LEVAR: Well, now that I've
19 heard from at least two of you that there are objections
20 planned, maybe we'll just wait with bated breath for
21 those developments, and maybe at the conclusion of the
22 hearing would be the appropriate time to discuss anything
23 further.

24 Any objection from anyone to moving forward
25 that way?

1 Okay. Ms. Wegener.

2 MS. WEGENER: The company calls Steve
3 McDougal as its witness.

4 COMMISSIONER LEVAR: Yes, and I think
5 wherever you're most comfortable doing your testimony
6 from.

7 MR. MCDUGAL: I'm okay, either spot.

8 COMMISSIONER LEVAR: Okay. Good morning
9 Mr. McDougal.

10 MR. MCDUGAL: Good morning.

11 DIRECT EXAMINATION

12 STEVE MCDUGAL,
13 called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 COMMISSIONER LEVAR: Okay. Thank you.
16 Go ahead.

17 BY MS. WEGENER:

18 Q. Good morning, Mr. McDougal. Can you please
19 state and spell your name for the record?

20 A. Yes. My name is Steven R. McDougal, the last
21 name is spelled M-C, capital D, O-U-G-A-L.

22 Q. What's your position with the company?

23 A. I'm the managing director of revenue
24 requirement.

25 Q. In that position, did you supervise Nicholas

1 Highsmith, who prepared direct and rebuttal testimony and
2 exhibits in this matter?

3 A. Yes, I did.

4 Q. Is Mr. Highsmith still employed with the
5 company?

6 A. No, he is not.

7 Q. Have you reviewed the testimony and exhibits
8 that he submitted?

9 A. Yes, I have.

10 Q. Are there any corrections that you would make
11 to that testimony?

12 A. There is one correction. In his pre-filed
13 direct testimony on Exhibit RMP NLH-1, the correction is
14 just on line No. 1, there is an incorrect reference. The
15 reference should be Docket No. 20-035-04.

16 Q. Do you adopt Mr. Highsmith's testimony as
17 your own?

18 A. Yes, I do.

19 Q. If I asked you the same questions that are
20 contained in his testimony today, would your answers be
21 the same?

22 A. Yes, they would.

23 MS. WEGENER: I move to admit the direct and
24 rebuttal testimony and associated exhibits of
25 Mr. Nicholas Highsmith.

1 COMMISSIONER LEVAR: Thank you.

2 If anyone objects to that motion, please
3 indicate your objection.

4 MR. RUSSELL: Yes. UAE has an objection. I
5 understand that the office has a related objection, but I
6 guess I'll go first.

7 UAE objects to the admission of certain
8 portions of the pre-filed testimony on the grounds that
9 it is barred by the doctrine of res judicata, which
10 prevents parties to -- from seeking to relitigate issues
11 that were fully and fairly litigated and decided in a
12 prior proceeding.

13 Here, I am speaking of the issue preclusion
14 arm of res judicata, which bars a fact or an issue from
15 being relitigated if it was fairly and fully litigated in
16 a previous proceeding.

17 This commission's orders in the general rate
18 case clearly ruled that the rates set, that became
19 effective January 1 of this year, included \$11.9 million
20 in expected test year pension settlement loss. Portions
21 of the pre-filed testimony of the company attempt to
22 relitigate that issue by asserting that only \$7.9 million
23 of pension settlement loss was included in rates.

24 Issue preclusion applies when the following
25 four elements are satisfied: First, the party against

1 whom issue preclusion is asserted was a party to the
2 previous adjudication. Clearly, that element is met.
3 The company was a party to the general rate case.

4 The second element is that the issue decided
5 in the prior adjudication was identical to the one
6 presented in the instant action. The question of the
7 amount of pension settlement loss included in rates was
8 decided in the general rate case, and it is squarely at
9 issue and discussed in the testimony here.

10 The third element is that the issue decided
11 in the first action was completely, fully, and fairly
12 litigated. Clearly, it was. It was the subject of
13 pre-filed testimony. It was the subject of testimony, I
14 believe, presented at the hearing. It was also the
15 subject of post-hearing briefing.

16 And fourth -- the fourth element is that the
17 first adjudication resulted in a judgment on the merits.
18 The general rate case clearly did result in a judgment on
19 the merits. And any effort by the company at this
20 proceeding to claim that something, other than \$11.9
21 million of pension settlement loss, was included in rates
22 directly contradicts the commission's ruling in the
23 general rate case, and is the very type of issue that
24 issue preclusion bars from -- the parties from seeking to
25 relitigate.

1 And at this point, I guess I'll identify the
2 portions of the pre-filed testimony that are subject to
3 the objection. There is one line in the direct
4 testimony, starting at line 72, and it is everything
5 after the semicolon starting on line 72 and going into
6 the end of that sentence on 73.

7 In the rebuttal testimony, there are several
8 portions of the testimony that are subject to the
9 objection. The first starts on line 33 of the rebuttal
10 testimony, which is the sentence beginning, "The PSABA
11 Base," and it's the remainder of that sentence, which
12 concludes on line 35.

13 In addition, there is a sentence beginning on
14 line 49, that starts, "This incorrect accounting
15 assumption," and it's the remainder of that sentence that
16 concludes on line 50. It is down below, starting on line
17 52, the first sentence of that next paragraph, which
18 starts on line 52, with both Mr. Einfeldt's and concludes
19 on line 54.

20 A bit further down in the rebuttal testimony,
21 starting at line 111 and ending at line 140, including
22 both Tables 1 and Table 2. And finally, starting at line
23 153, there is a sentence beginning, "In the Year 1
24 example," and ending on line 156.

25 And I will conclude by stating that I want to

1 be clear that our objection is to the portions of the
2 testimony that assert that the amount of pension
3 settlement loss is something other than \$11.9 million
4 or -- pardon me, that the amount of the pension
5 settlement loss included rates is something other than
6 \$11.9 million.

7 We do not object to testimony that discusses
8 how that \$11.9 million is included in rates. We believe
9 that is fair game. Although, I suppose, maybe, other
10 parties maybe disagree with that distinction.

11 COMMISSIONER LEVAR: Okay. Can I just ask a
12 couple questions, Mr. Russell, before I go to the other
13 attorneys to respond to that motion?

14 MR. RUSSELL: Sure.

15 COMMISSIONER LEVAR: So is my microphone
16 working okay with the mask? Okay.

17 Two related -- well, when I say one question,
18 maybe two parts. Are you aware of any legal precedent
19 applying those res judicata principles to the Utah
20 Administrative Procedures Act generally or to the PSC
21 specifically?

22 And in particular, I'm thinking of, and I
23 don't have the statutory reference, but there is a
24 statute in Title 54 that lays out the circumstances under
25 which the PSC can alter or modify a previous ruling.

1 Whether or not we are being asked to do that, I am not
2 saying one way or another. But in light of that statute
3 and the Administrative Procedures Act generally, do you
4 have anything to add to your motion?

5 MR. RUSSELL: Yes. In response to your
6 question about whether the res judicata doctrine has been
7 or can be applied to the administrative adjudicative
8 decisions, the answer is yes.

9 I will cite you to Salt Lake Citizen's
10 Congress versus Mountain States Telephone and Telecom, at
11 846 P.2d 1245, and I will quote from there: Res
12 judicata, often referred to as claim and issue
13 preclusion, prevents the re-adjudication of issues
14 previously decided.

15 Further down it states: The doctrine is
16 premised on the principal that a controversy should be
17 adjudicated only once. Although initially developed with
18 respect to the judgment of courts, the same basic
19 policies, including the need for finality in
20 administrative decisions, support application of the
21 doctrine of res judicata to administrative agency
22 determinations.

23 COMMISSIONER LEVAR: So would you interpret
24 that phrase, that I just heard you support application,
25 as mandatory or discretionary?

1 MR. RUSSELL: I believe it's mandatory. I
2 believe it's a legal issue that is mandatory, yes.

3 COMMISSIONER LEVAR: Okay.

4 MR. RUSSELL: I think -- I suppose it's
5 possibly that -- well, I don't want to get too far out
6 of -- I haven't looked into the question you are talking
7 about with respect to the Administrative Procedures Act
8 rule. I don't know which rule that, Mr. Chairman, you're
9 citing there.

10 COMMISSIONER LEVAR: Well, I think I
11 was -- if my memory's correct, it's statute in Title 54,
12 not part of any law generally, but I don't have that
13 handy. We could look it up during the break,
14 but -- well, we're probably going deal with this before a
15 break.

16 Commissioners Allen or Clark, do you want to
17 ask any questions of Mr. Russell before I go to the other
18 counsel?

19 COMMISSIONER CLARK: I don't have any
20 questions. Thank you.

21 COMMISSIONER ALLEN: I have no questions.

22 COMMISSIONER LEVAR: Okay. I will go to
23 Mr. Jetter.

24 Do you want to say anything about this
25 motion?

1 MR. JETTER: I haven't, I guess, prepared for
2 an oral argument on this motion, so I will leave it at
3 that and not add any additional comment.

4 COMMISSIONER LEVAR: Okay. Mr. Moore?

5 MR. MOORE: Yes. The OSC -- excuse me, the
6 OCS joins UEAs objection. And in addition, we have an
7 additional objection that implicates additional lines of
8 Mr. Highsmith's testimony based on related doctrine, the
9 doctrine of judicial estoppel.

10 COMMISSIONER LEVAR: And is it your
11 preference that we deal with both motions together?

12 MR. MOORE: I have no preference.

13 COMMISSIONER LEVAR: It seems like that would
14 be most convenient to do it that way.

15 MR. MOORE: Let me set out the lines first.
16 The OCS objects to Mr. Highsmith's direct testimony,
17 lines 56 through 90. And Mr. Highsmith's rebuttal
18 testimony, lines 32 through 35. Line 44 through the
19 first full sentence in line 45, ending with "customer
20 rates." Line 60 through 72. Line 160, starting with the
21 first full sentence, beginning with "The error in
22 calculations," through line 126.

23 COMMISSIONER LEVAR: I think you misspoke.
24 Did you say line 160 through what now?

25 MR. MOORE: I'm sorry, 106. 106, not 160.

1 COMMISSIONER LEVAR: 106, okay.

2 MR. MOORE: I apologize, I don't know if the
3 commission knows this, but I'm a little dyslectic, so I
4 will be reversing things at times. I apologize.

5 COMMISSIONER LEVAR: We will try to catch
6 them when we can. Thanks.

7 MR. MOORE: And the last lines I would like
8 to object to are lines 146 through line 156.

9 COMMISSIONER LEVAR: Okay. Do you want to
10 add anything else to your objection?

11 MR. MOORE: Yes. All this testimony
12 constitutes assertions and arguments for the proposition
13 that \$7.9 million in pension losses included in rates,
14 rather than the 11.9 million in pension losses included
15 in rates.

16 Rocky Mountain Power should stop from making
17 these arguments under the well-recognized doctrine of
18 judicial estoppel, specifically in testimony and
19 pleadings in general rate cases and in petition for
20 reconsideration from the general rate case.

21 Rocky Mountain Power may repeat its
22 assertions that the \$11.9 million in settlement losses be
23 included in rates and constitutes the base amount for the
24 pension settlement and adjustment balancing account.

25 RPM joined these two assertions together for

1 tactical reasons. The OCS, on the other hand, argues
2 that entire 11.9 million in settlement losses not be
3 included in rates, but rather be amortized over 20 years.
4 RPM -- Rocky Mountain Power won the argument in the
5 general rate case, and this -- and the entire settlement
6 loss was not amortized but included in rates in the test
7 year. This results in a detriment to the consumers.

8 Now in the pension balancing account docket,
9 RPM wants to change its position and argue that only 7.9
10 million settlement losses were include in the general
11 rate case, so the base amount in pension settlement -- or
12 the pension settlement adjustment balancing account would
13 be 9.7 million.

14 This change in position would also be
15 detrimental to consumers. Accordingly, under the
16 doctrine of judicial estoppel, Rocky Mountain Power
17 should stop from making these arguments. Accordingly,
18 challenging testimony should not be admitted.

19 I haven't -- I do not have case cites for
20 your question to Mr. Russell regarding judicial estoppel
21 as opposed to general, accurate principles, but I am
22 aware of a Court of Appeals case that has applied
23 judicial estoppel to administrative proceedings, and I am
24 aware of at least one case from the PSC that has applied
25 judicial estoppel in their proceedings.

1 Thank you.

2 COMMISSIONER LEVAR: Okay. Thank you.

3 Commissioner Clark or Commissioner Allen, any
4 questions for Mr. Moore?

5 COMMISSIONER CLARK: Just the citation to the
6 Public Service commission case, if you have it, Counsel.

7 MR. MOORE: I could -- if we have a break, I
8 could -- I could get it to you.

9 COMMISSIONER CLARK: Thank you.

10 COMMISSIONER LEVAR: Mr. Allen?

11 COMMISSIONER ALLEN: No questions. Thank
12 you.

13 COMMISSIONER LEVAR: Okay. Ms. Wegener.

14 MS. WEGENER: Thank you. I think I am
15 figuring out the microphone. This is my first in-person
16 hearing here. I have been doing this for a little while
17 for that to happen.

18 COMMISSIONER LEVAR: The technology in the
19 room is a little old.

20 MS. WEGENER: Get used to one technology, and
21 then you have to get used to another one.

22 The company obviously disagrees with the
23 application of res judicata or judicial estoppel in these
24 circumstances, and the grounds that we disagree for issue
25 preclusion are that we don't believe that the initial

1 amount that will be included in the balancing account was
2 fully and fairly litigated in the generate case. What
3 was litigated in the general rate case was rates.

4 And if you look at the testimony submitted by
5 the parties here, there's no party that contests that the
6 \$4 million difference was included somewhere else in the
7 rate case. I believe that Mr. Einfeldt says that it's
8 buried deep in the work papers, so there's some dispute
9 about whether it is easy to find or not.

10 But there's no dispute that the company's
11 accounting treatment in the rate case was a mistake, and
12 it was a mistake that resulted in 7.9 million being
13 expensed. There is no dispute about that. And \$4
14 million that kind of went poof, because the company was
15 accurately accounting for capitalization with one hand
16 and not with the other.

17 But the point is that in the general rate
18 case, our request is consistent with the rates that were
19 determined and there was no balancing account amount
20 determined. And, in fact, in the commission's order on
21 the petitions for rehearing, it states: We look forward
22 to developing a full record on these issues in the
23 forthcoming docket to address the balancing account.

24 If the evidence demonstrating rates effective
25 January 1 charged Utah ratepayers more for pension

1 settlement adjustments than RMP actually realizes, this
2 will be precisely the sort of discrepancy the balancing
3 account is intended to rectify. There was no ruling in
4 that section that said the amount will be 11.9 million or
5 the amount will be 7.9 million. It was left open for
6 discussion at this hearing. And so it is the company's
7 position that that rate case order does not mandate a
8 certain amount.

9 I do agree with Mr. Russell that the
10 principle of res judicata is applicable in an
11 administrative setting like this. And I haven't looked
12 into the statute that you cited either, but I would say
13 that if the commission has the authority to modify orders
14 in the way that I think that it does, having not read it
15 recently, that -- as I mentioned earlier, I don't think
16 that's necessary in order to hear testimony that the
17 balance should be 7.9 million or to find that it should
18 be 7.9 million.

19 But the testimony shows that that is the
20 accurate amount for the balancing account. That is the
21 accurate amount that was included in rates. And so the
22 commission, to the extent it has the authority, can go
23 back and alter anything necessary in order to include
24 that amount in the balancing account.

25 On the issue of judicial estoppel, let me get

1 to that, I think that the office's argument on judicial
2 estoppel fails because there was no reliance on the
3 company's position to their detriment. Mr. Moore talks
4 about some detriments that consumers, in his view, will
5 experience, and I would argue that it is not a detriment
6 to consumers for the company to recover its prudent
7 latent costs.

8 So I'm not sure that that counts as a
9 deterrent anyway, but it wasn't a detrimental reliance on
10 the company's representation that harmed consumers. And
11 so judicial estoppel wouldn't be applicable.

12 And let me see if I have -- I would also say
13 that one of the elements of judicial estoppel is the
14 company's prior position was successfully maintained, and
15 I would say that since the commission did not actually
16 determine the amount in this balancing account, that
17 there was no prior position that the company successfully
18 maintained in the rate case proceeding that needs to be
19 applied here.

20 Finally, judicial estoppel requires bad
21 faith, and I think that it's difficult to say that what
22 happened here was bad faith. So I would request that the
23 commission overrule the objections.

24 COMMISSIONER LEVAR: Okay. Thank you. I
25 just want to ask a couple questions, maybe, to your

1 discussion to the meaning of that reconsideration order.

2 Would you agree that -- I mean, I understand
3 the imprecise nature of those two paragraphs you just
4 read. Would you agree that the commission did not make
5 the adjustment that UAE was asking us to make in that
6 reconsideration phase?

7 MS. WEGENER: I believe the portion of the
8 order that that's on -- and let me look -- was just about
9 being unsure what the starting balance would be of the
10 PSABA. And it looked to me like the commission didn't
11 make a decision, one way or the other, on what that
12 starting balance would be.

13 COMMISSIONER LEVAR: Okay. But would you
14 agree that there was no adjustment to revenue requirement
15 based on UAE'S request --

16 MS. WEGENER: Yes.

17 COMMISSIONER LEVAR: -- in that order? Okay.
18 So, you know, as I listen to that language that when used
19 in our reconsideration order on the opportunity to
20 rectify, your argument is that that applies not just to
21 the ongoing operation on the balancing account but also
22 to the starting point?

23 MS. WEGENER: Yes.

24 COMMISSIONER LEVAR: Okay. Commissioners
25 Clark or Allen, any questions for Ms. Wagener at this

1 point?

2 COMMISSIONER ALLEN: Not from me. Thank you.

3 COMMISSIONER CLARK: I don't have any
4 questions either. Thank you.

5 COMMISSIONER LEVAR: Okay. Well, I think
6 I'll indicate where I am leaning on these two motions,
7 and then see if either of my colleagues want to ask
8 further question or do a recess. But I will go ahead and
9 say where I'm leaning.

10 And this isn't directly applicable, but I'm
11 thinking of taking the page of the Utah Supreme Court's
12 book on export credit case when they declined to rule on
13 the jurisdictional issue prior to full briefing on the
14 merits, and I think my inclination is to move forward
15 with the hearing without granting the motions.

16 We certainly understand that this issue is a
17 primary issue as we consider this matter, and we
18 certainly recognize the significance of the objections.
19 We recognize that legal issues also have been preserved
20 through the objections. But that's where I'm leaning.

21 And if either of the commissioners want to
22 take a recess to discuss or, otherwise, ask any further
23 questions, I will open it up to that.

24 COMMISSIONER CLARK: I'm content to move
25 forward with the hearing --

1 COMMISSIONER LEVAR: Okay.

2 COMMISSIONER CLARK: -- without restricting
3 the evidence that we receive at this point. But I
4 understand the direction of the motions as well, and so
5 that's -- I am comfortable with the ruling that you have
6 tentatively expressed, Chair LeVar.

7 COMMISSIONER LEVAR: Thank you. Mr. Allen?

8 COMMISSIONER ALLEN: Yes, the issues have
9 been cued up, so let's proceed and see where we go from
10 there.

11 COMMISSIONER LEVAR: Okay. With that, the
12 two motions are denied.

13 Anything further before we go to Rocky
14 Mountain Power's witness?

15 MR. RUSSEL: Just a quick clarification.
16 You've denied the objection, and have you admitted the
17 testimony, or are you taking that under advisement?

18 COMMISSIONER LEVAR: That's right. We were
19 on the underlying motion to admit the testimony, so I
20 have not done that yet.

21 MR. RUSSELL: Okay.

22 COMMISSIONER LEVAR: So both of your
23 positions have an objection to admission of the
24 testimony. Do either of you have anything else to add to
25 that underlying motion?

1 MR. RUSSEL: No. Only that I think the
2 statutory citation that you were searching for earlier,
3 Mr. Chairman, was Title 54-7-14.5. And I will also note
4 that 54-7-14 actually is a statute that actually codifies
5 the application of res judicata to commission
6 proceedings. And then 14.5 indicates that the commission
7 may, at any time after providing an effective utility
8 notice and an opportunity to be heard, may rescind, alter
9 or amend any order or decision made by the commission.

10 So I don't think anybody's -- you had asked
11 the question. I thought -- I think that is the statute
12 that you indicated the question about, so I wanted to
13 point it out.

14 COMMISSIONER LEVAR: Thank you. That is the
15 statute I had in mind. Thank you for pulling it up.

16 And with that, the motion to admit the
17 evidence is granted -- to admit the testimony as evidence
18 is granted.

19 MS. WEGENER: Thank you.

20 BY MS. WEGENER:

21 Q. Mr. McDougal, can you provide a summary of
22 your testimony?

23 A. Yes. The purpose of my testimony is to
24 explain and support the company's proposal for the
25 pension settlement adjustments balancing account.

1 Specifically, I provided a background on how the account
2 was established, and explained the purpose, the proposed
3 calculation to actually true-up annual differences
4 between the actual pension settlement losses and the
5 amount recovered in rates. I also present an
6 illustrative example of the calculation and future
7 reporting requirements.

8 As part of the general rate case, the company
9 forecasted pension settlement losses of 11.9 million
10 during 2021, based on actuarial projections. At the end
11 of the last month, the company -- at the end of last
12 month, the company triggered a 2021 pension settlement
13 loss for calendar year 2021. Although the final amount
14 will not be known until the end of the year, it appears
15 the loss will be similar in size to the rate case
16 forecast.

17 In its order on the company's 2020 general
18 rate proceeding, the commission recognize that these
19 pension expenses are plainly recoverable, and that it was
20 reasonable to provide a mechanism for the company to
21 recover them.

22 The commission, therefore, ordered the
23 company to, quote, establish a balancing account to
24 true-up on an annual basis the pension settlement
25 adjustments that it actually recognizes with the amount

1 it recovered in rates. This docket is to establish the
2 pension settlement balancing in accordance with that
3 order.

4 The company's proposed balancing account
5 calculations include, on an annual basis, the difference
6 between the Utah allocated pension settlement loss
7 collected in rates versus the Utah allocated amount
8 expensed. Any difference will be deferred to a
9 regulatory asset or regulatory liability, with an annual
10 carrying charge at the commission-approved customer
11 deposit rate under Schedule No. 300.

12 The company will continue to defer any
13 differences booked into the regulatory asset or
14 regulatory liability until the rate treatment is
15 determined via a separate proceeding or a general rate
16 case. If a material balance is reached in either the
17 regulatory asset or regulatory liability, the company, or
18 another party, could initiate a proceeding and propose a
19 tariff schedule. Otherwise, the balance will be
20 addressed in the next general rate case.

21 Since the company is committed to reporting
22 on the balance each year, there is no need for the
23 commission to impose a specific threshold for when to
24 implement a rate adjustment. The company will report the
25 total regulatory asset or regulatory liability balance

1 and the pension settlement balancing account each year on
2 or about May 15th. Included in the report will be a
3 detailed calculation showing the difference of the Utah
4 allocated pension settlement loss in rates and the Utah
5 allocated amount expensed, as well as the calculation of
6 the carrying charge.

7 An illustrative example of the calculation
8 report that would be filed annually is provided as
9 Exhibit RMP NLH-1.

10 As part of the direct filing in this case, I
11 pointed out that a portion of the 11.9 million settlement
12 loss included in the 2021 GRC was incorrectly assumed to
13 be subject to capitalization, which resulted in 7.9
14 million total company of pension settlement loss included
15 in the rate case revenue requirement and, consequently,
16 in customer rates.

17 I think it is important to understand that
18 that distinction, that the 11.9 million was included in
19 the rate case. It's just that the company incorrectly
20 subtracted 33 percent of that, assuming it was going to
21 be capitalized, which was an incorrect assumption.

22 Because of that incorrect assumption, it
23 doesn't change what the -- you know, the 11.9 million was
24 there. It's just, there was an incorrect understanding
25 of what the accounting rules required. The company

1 assumed that the 33. -- approximately 33 percent, or 4
2 million of the loss, would be capitalized, based on
3 historic treatment of wages and benefits, but did not
4 consider the change in accounting rules that required the
5 capitalization of service cost only starting in 2018.

6 Based on the changes and accounting guidance,
7 all pension settlement losses are recognized and expensed
8 in the period in which they occur, and no amounts are
9 subject to capitalization. PacifiCorp has correctly
10 applied the accounting guidance since it was issued on
11 our accounting books.

12 Therefore, the \$4 million that the PacifiCorp
13 regulation assumed was capitalized as part of the wage
14 adjustment was not actually capitalized and was not
15 included in any of the rate base calculations. And
16 customers are not paying for any pension of the pension
17 settlement loss that was assumed to be capitalized
18 through depreciation or through rate base.

19 On a second issue, even if the 4 million had
20 accidentally been capitalized, it would have only
21 increased the company's revenue requirement in the case
22 by approximately \$200,000.

23 In direct testimony, no party opposed the
24 mechanics of the company's proposed balancing account.
25 However, parties raised concerns over what should be the

1 appropriate base for use and determining the starting
2 point in which the annual true-up is measured.

3 The company believes the purpose of the
4 balancing account, like all other balancing accounts, is
5 to allow the company to recover the difference between
6 the amounts included in rates of 7.9 million total
7 company, or 3.5 million Utah allocated, and the amount of
8 pension settlement losses that are expensed by the
9 company.

10 The incorrect calculation in the rate case
11 should not change the mathematics of how the mechanism is
12 calculated, as the base should be set at the amount
13 included in rates. If the adjustment were the opposite
14 direction, I would be proposing the exact same treatment.

15 The company became aware of the change
16 related to pension settlement losses around August of
17 2020, but chose not to update the case because of the
18 timing. Because of the company's primary -- because the
19 company's primary request was to include the pension
20 settlement loss in rates, we did not evaluate the effect
21 of not updating a balancing account, and this did not
22 factor --

23 MR. MOORE: Objection. This goes beyond the
24 surrebuttal testimony in the pre-filed testimony; and,
25 therefore, it constitutes surrebuttal testimony, and that

1 we haven't had a chance to review that. So we would
2 object to any testimony, other than that, that is
3 contained in the pre-filed testimony.

4 COMMISSIONER LEVAR: Okay. I'll ask
5 Ms. Wegener or Mr. McDougal if you can identify where in
6 the pre-filed written testimony that what he is referring
7 to is located.

8 THE WITNESS: The one part that I do not know
9 if it is completely in there, because it is not discussed
10 one way or the other, is that we did not -- we did not
11 evaluate the effective updating on a balancing account,
12 because that was not proposed in a rate case.

13 We do mention in rebuttal testimony what we
14 did propose, and that we did propose that the settlement
15 losses be included in base rates that was the company's
16 proposal. So all I'm saying here is consistent with the
17 rebuttal testimony, where I stated we did not evaluate
18 the other, and in testimony, I stated what we did
19 evaluate, which was what was in the case.

20 COMMISSIONER LEVAR: Okay. Thank you.

21 Ms. Wegener, do you want to add anything? If
22 you need a few moments, we will wait.

23 MS. WEGENER: I am looking for it. My
24 memory's the same as Mr. McDougal's. It looks like it's
25 rebuttal, starting on line 73, let me take a look at that

1 really quick and make sure, where we're talking about the
2 decision-making process, what we became aware of when.

3 And I suppose that some of the
4 characterization of that may go a bit beyond, and
5 Mr. McDougal can move on, but we definitely talk about
6 becoming aware of the error and the decision-making
7 process at that time, and how that understanding of the
8 error evolved over time is contained in testimony.

9 COMMISSIONER LEVAR: Okay. Are you
10 suggesting that we can move on and continue with the
11 summary, Mr. Moore? Does that take care of your
12 objection at this point?

13 MR. MOORE: I believe the objection -- there
14 is some reference to a mistake in the testimony, but I
15 don't believe the testimony talks about their
16 decision-making process in any substantive form.

17 And so just moving on would work, but
18 maintaining that objection to strike any portion of
19 Mr. McDougal's testimony that went beyond the mere
20 statement of their decision-making process as opposed to
21 what that process was.

22 COMMISSIONER LEVAR: Okay. It seems like
23 these distinctions we have will help guide us in our
24 deliberation from the transcript. I think from that,
25 going back and trying to parse out what words that

1 Mr. McDougal has already spoken might -- should be
2 considered for striking probably isn't the best use of
3 our time right now.

4 We will do that, if you want to make that
5 objection, but it seems like you're content moving on.

6 MR. MOORE: I'm content moving on. Thank
7 you, Commissioner.

8 COMMISSIONER LEVAR: Go ahead, Mr. McDougal.

9 THE WITNESS: The purpose of this filing is
10 to seek to accomplish the commission's stated purpose in
11 establishing the balancing account, in the order the
12 commission said they wanted us to establish a balancing
13 account that compared the amount in rates to the actual
14 expenses. That is the purpose that we are seeking in
15 this filing, is to allow the company to recover our
16 plainly recoverable pension costs.

17 Therefore, the company requests that the
18 commission establish the pension settlement adjustment
19 balancing account as set forth in the application. Thank
20 you.

21 MS. WEGENER: Thank you. I have no further
22 questions for Mr. McDougal, and he is available for
23 cross-examination and questions from the commission.

24 COMMISSIONER LEVAR: Thank you.

25 Mr. Jetter?

1 MR. JETTER: Hi, good morning.

2 CROSS-EXAMINATION

3 BY MR. JETTER:

4 Q. I do have a few questions, Mr. McDougal. In
5 your opening statement, you commented that it was assumed
6 that a portion of the 11.9 million was capitalized. And
7 by that, you mean -- is it accurate you mean that
8 non-Rocky Mountain Power parties to that case made that
9 assumption?

10 A. Nobody challenged that assumption, and that
11 assumption was in our wage and benefit adjustment. So we
12 took all the wages, we took the increases, we then
13 eliminated 33 percent of it and no party objected to
14 that. So I assume that all the parties did read the
15 testimony, and then looked at that.

16 Q. Okay. But Rocky Mountain Power internally
17 knew that was not the case; is that correct?

18 A. After the case was filed, we became aware
19 that there was an error, that there had been some
20 accounting guidance changes.

21 Q. Okay. And Rocky Mountain Power internally
22 was aware of that at a point in the case where it could
23 have corrected that in rebuttal testimony; is that
24 correct?

25 A. We became aware of it. It would have been

1 time sensitive to have made it. And I would point out at
2 that point, we were still trying to figure out what other
3 items would or would not have been included.

4 Q. Okay. But I guess to answer my question,
5 Rocky Mountain Power could have corrected that. It had
6 knowledge of that accounting change from 2018 and had
7 identified that error in testimony, prior to filing
8 rebuttal testimony?

9 A. Yes, we had identified that the pension
10 settlement loss was incorrect, and we just didn't
11 understand the full issue.

12 Q. Okay. And there's a number of examples, I
13 think you would agree with me, throughout the remainder
14 of the general rate case, including the post-hearing, the
15 briefing where Rocky Mountain Power continues to assert
16 that 11.9 million is included in rates?

17 A. I would have to look at the exact language.
18 I know that 11.9 million was included in the rate case,
19 and I don't dispute that. The fact that that is the
20 amount in rates, to the extent that was ever said, that
21 would be incorrect. It was included in the rate case at
22 11.9, but it was not included in the actual rates.

23 Q. So let me ask you just a few brief questions
24 about that. When you get -- when Rocky Mountain Power
25 receives a payment from a customer, that's an aggregate

1 payment. That's not broken down into the all of the
2 different accounting categories; is that correct?

3 A. That is correct.

4 Q. And after a rate case is completed, all of
5 the revenue that utility receive, none of that's broken
6 down into those specific category, is it?

7 A. Not everything is broken down, but a lot of
8 it is. For instance, we have the energy balancing
9 account. We have the renewable energy balancing account.
10 Those are broken out, and they are broken out by what was
11 included in the modeling and within what was used to set
12 rates.

13 Q. And so in this case for a pension settlement
14 loss account, there is not a breakdown of that, that
15 would separate that from the aggregate revenue and the
16 aggregate expenses?

17 A. No.

18 Q. Is that correct?

19 A. But I would say that there is also nothing on
20 the other balancing accounts necessarily, absent as
21 filing a specific docket similar to what we are doing
22 here, which I think that is the purpose of this, is to
23 establish that base. Whereas if you take the energy
24 balancing account, where we knew that mechanism in
25 advance, we isolated those costs and we created an

1 exhibit. Here, we have not.

2 Q. And so in the case of the energy balancing
3 account, for example, it's accurate that the commission
4 sets an energy balancing account base amount that's
5 collected through rates; is that correct?

6 A. That is correct.

7 Q. And then the true-up is based on costs that
8 exceed or come in below what is set in base rates by the
9 commission?

10 A. That's correct. And that is exactly what we
11 are requesting here.

12 Q. Okay. And in those cases, we would rely on
13 what the commission sets during the general rate as a
14 base amount?

15 A. That is correct. And that -- like I said,
16 where we didn't do that in the rate case, that was my
17 understanding of what the purpose of this proceeding is.

18 Q. And if we were going to go look for what the
19 base amount would be, we would -- we would go to
20 commission's order in the general rate case and find out
21 what the commission had ordered; is that correct?

22 A. In the order, they do quote the 11.9 million
23 that was included as pension settlement losses, not the
24 actual amount in rates, which is what -- even on
25 production tax credits, we quote an amount, but we

1 actually gross-up for taxes, and it is not the amount
2 that's in rates.

3 Q. Okay.

4 A. We want to true-up -- we true-up the amount
5 in rates.

6 Q. But the commission ordered the 11.9 million
7 in rates, and is it accurate that that is a match for
8 what Rocky Mountain Power had asked for in its testimony
9 in the case?

10 A. I would have to go back to exact wording. I
11 don't know if they ever said: It's 11.9 million in rates
12 versus it's 11.9 million in the -- that we included in
13 the revenue requirement.

14 Q. And so I am just going to read you something,
15 and this is just a sentence from a post-hearing brief on
16 Rocky Mountain Power's response and in opposition to
17 Petitioner's relief for consideration, review and
18 rehearing.

19 And it states that: It could not be more
20 clear that the initial amount in the balancing account is
21 11.9 million.

22 Does that change your answer to -- or your
23 recollection of what Rocky Mountain Power had asked for?

24 A. I don't agree with that. I think that
25 statement -- it's very clear that the 11.9 million is

1 what was included for pension settlement loss as in the
2 case, but it's not clear how much is actually included in
3 rates. And I think there is a distinction there, and to
4 the extent that that sentence -- to cut a word from the
5 sentence, I think it could have been clearer in that
6 sentence.

7 Q. Okay. And do you have any knowledge of
8 whether counsel for Rocky Mountain Power was aware of the
9 internal discussions regarding that error that happened
10 in -- I guess that was identified in August of 2020?

11 A. I don't have any recollection of when they
12 were brought into the loop or when they were -- you know,
13 when they were made aware of it.

14 Q. Okay. Do you know whether the individuals
15 who were aware of that, do you know whether they
16 typically would review these filings before they filed?

17 A. Who are you referring to? The people on that
18 email chain?

19 Q. Those, or anyone else internally, who would
20 know that the choice was made not to -- not to correct
21 the accounting in the general rate case filings.

22 A. They are involved in a lot of the aspects and
23 a lot of the reviews. Exactly what parts they reviewed,
24 I would have to ask them.

25 Q. Okay. I am going to read you another

1 sentence, and this comes from a Rocky Mountain Power
2 post-hearing brief in this general rate case, 20-035-04,
3 where Rocky Mountain Power's counsel writes: The
4 company's revenue requirement includes 11.9 million in
5 actuarially projected pension settlement losses that
6 result when the aggregate lump sum of cash distributions
7 in a calendar year exceed a defined threshold. And then
8 (service cost plus interest cost.)

9 And then that is identified as a reference to
10 the direct testimony in the general rate case of Nikki
11 Koblaha.

12 Do you agree that is a statement directly
13 from the company, that 11.9 million is included in rates?

14 A. I think when you read it, it stated -- it
15 said that the 11.9 million -- I don't recall is seeing it
16 was in rates. I recall it saying it was in the rate
17 case. It's slightly -- it's a little confusing and it
18 gets very technical, in that the 11.9 million is included
19 in calculating our revenue requirement. But then we
20 subtract off 33 percent of it, assume it's capitalized in
21 actually setting the rate and in setting a rate increase.
22 So --

23 Q. Well, let me --

24 A. -- so I would have to -- so it is a very
25 fine, technical line.

1 Q. Let me ask it maybe a different way here.
2 If -- and I will give you a hypothetical. If Rocky
3 Mountain Power had asked, as it did in the rate case, for
4 the 11.9 million to be included in the revenue
5 requirement, and the commission had granted Rocky
6 Mountain Power's request without a balancing account, you
7 would agree with me that the rates that were set at the
8 end of the rate case would continue to be collected until
9 the next general rate case; is that -- is that accurate?

10 A. Yes, it is.

11 Q. Okay. Those are all my questions. Thank
12 you.

13 COMMISSIONER LEVAR: Thank you, Mr. Jetter.
14 Mr. Moore?

15 MR. MOORE: Thank you. Just a few questions.

16 CROSS-EXAMINATION

17 BY MR. MOORE:

18 Q. I apologize, I've forgotten your name.

19 A. I am Mr. McDougal or Steve, whichever you
20 prefer to call me.

21 Q. I'll call you Mr. McDougal.

22 COMMISSIONER LEVAR: Mr. Moore, I'm not sure
23 you microphone is picking you up. We can all hear you
24 fine, but we are streaming and that would make a
25 difference with the stream.

1 MR. MOORE: How's this?

2 COMMISSIONER LEVAR: Great, thank you.

3 BY MR. MOORE:

4 Q. Could I turn your attention to line 91
5 through 98 of Mr. Highsmith's direct testimony? And
6 could you please read those questions and answers from
7 those lines into the record?

8 A. Okay. Starting on line 91:

9 "Q. How does the company propose to collect
10 or refund differences between pension settlement losses
11 in rates and the amount expensed.

12 "A. The company will continue to defer any
13 differences booked into the regulatory asset or
14 regulatory liability until the rate treatment is
15 determined via a separate proceeding or general rate
16 case. If a material balance is reached in either the
17 regulatory asset or regulatory liability, the company
18 would initiate a proceeding to present its proposal for
19 regulatory treatment, which may include a new tariff to
20 amortize the balance. Otherwise, the balance will be
21 addressed in the next general rate case."

22 Q. Thank you. Are you aware in its rebuttal
23 testimony, the OCS asserted that if the balance is
24 reached in the -- if a material balance was reached in
25 the pension balancing account of plus or minus 10

1 million, any party, not just Rocky Mountain Power, may
2 petition or position to request the implementation of a
3 surcredit or a surcharge in a single year, or to amortize
4 to spread the balance over a number of years?

5 A. Yes.

6 Q. Now may I direct your attention to lines 176
7 through 183 of your rebuttal testimony?

8 A. I am there.

9 Q. Can you please read the question and answer
10 into the record?

11 A. "Mr. Einfeldt and Ms. Ramas ask the
12 commission to allow for an implication of a surcredit or
13 surcharge if the PSABA deferral balance reaches a
14 material balance. Would you like to address this
15 proposal?

16 "A. The company has committed to providing
17 parties the balance of the PSABA annually and the
18 calendar year-end results of operations report. In
19 between rate cases, the company, or any stakeholder, can
20 initiate a proceeding for collection, refund, or other
21 regulatory treatment of the balance, if any stakeholder
22 deems the amount to be material. As such, setting a
23 specific threshold is unnecessary."

24 Q. Isn't it true that Rocky Mountain Power has
25 adopted the OCS's position on the treatment of material

1 balance in the PSABA, with the exception of setting a
2 threshold of plus or 10 minus -- plus or minus \$10
3 million?

4 A. Yes, we have. But in my opinion, even when
5 we filed the direct testimony, we understood that at any
6 point, once that balance becomes large, any party could
7 come to this commission and say, "We believe it is
8 material, and we could request it."

9 What we have done here is try to explicitly
10 call out that we are okay with that.

11 Q. Thank you. Now may I direct your attention
12 to lines 170 to 174 of your rebuttal testimony, and could
13 you please your testimony contained in those lines?

14 A. Okay. Do you want me to read the question on
15 169 also?

16 Q. You can if you like. It is not helpful.

17 A. Okay. The answer, "Since pension settlement
18 losses can occur at any point in a given year in the
19 final SO allocation factor for the applicable year would
20 not be known until around April of the following year,
21 the company proposes the actual pension settlement losses
22 be allocated using the final SO factor from the most
23 recently filed Utah year-end results of operations
24 report."

25 Q. Is this the same method Rocky Mountain Power

1 uses in determining inner drills and allocation in the
2 company's other balancing accounts, specifically the EBA
3 and the RBA?

4 A. Basically, yes. The company -- in an EBA or
5 RBA, we look at the -- one big difference, the EBA as an
6 example, we look at actual allocation factors. And the
7 reason we use actual results is because net power costs
8 themselves are not weather normalized, neither are
9 revenues. Within the results of operation, our SO, our
10 system overhead allocation factor, is weather normalized.

11 Q. Thank you. I have no further questions.

12 COMMISSIONER LEVAR: Thank you, Mr. Moore.

13 Mr. Russell?

14 MR. RUSSELL: Thank you, Mr. Chairman.

15 CROSS-EXAMINATION

16 BY MR. RUSSELL:

17 Q. Mr. McDougal, where could I go in the record
18 in this docket to check to see if any portion of the
19 pension settlement loss that was assumed to be
20 capitalized has or has not been included in rates?

21 A. You really can't go anywhere, because the
22 fact is, it's a negative, in that the 4 million was never
23 added into rate base anywhere. And the way -- the way
24 that happens is that when we are doing the capitalization
25 or the new rate base project, so we look at plant

1 in-service, accounting, who has the correct information,
2 comes up with a capitalization and they help all the
3 people who are building up the projects. And the
4 projects that are going into the rate case, all of our
5 capitalizations are coming from these forecasts through
6 finance. So those numbers are coming through finance.

7 In regulation, we looked at the expense side
8 and accidentally capitalized -- and assumed that finance
9 was including this \$4 million in there. When accounting
10 noted the error in the August timeframe, they had not
11 done anything wrong in the accounting department. They
12 had it right.

13 And so, you know, there isn't any place where
14 that 4 million is included in accounting as something to
15 be capitalized or included in new projects. So there
16 isn't anything place you can look at, because it's just
17 not there.

18 Q. Okay. Thank you. Let's assume a
19 hypothetical where the actual pension settlement loss
20 that's experienced in 2021 turns out to be \$11.9 million,
21 exactly at what the company said during the rate case
22 would be expected during the test year.

23 If the balancing account is established as
24 the division and the office propose, zero dollars will be
25 deferred; is that correct?

1 A. That is correct.

2 Q. And that's because the initial \$11.9 million
3 that they propose be included in the balancing account
4 would be offset by the actual \$11.9 million amount of the
5 pension settlement loss. Right?

6 A. Right. And then under that scenario, the
7 company would have actual pension settlement expense of
8 11.9 million, total company, and yet we would only be
9 collecting in rates the 7.9 million.

10 Q. And if the balancing account that is
11 established as UAE proposes in the actual pension
12 settlement loss in 2021 is \$11.9 million, the amount
13 deferred would also be zero; is that correct?

14 A. Under that scenario -- because what UAE, as I
15 understand it, is proposing is that we use the 7.9
16 million, the correct base, but we assume that we make
17 that same error going forward. So yes, it would net out
18 if it came in as exactly as projected.

19 Q. Okay. And if the balancing account is
20 established as the company proposes, what amount would be
21 deferred, if, assuming the \$11.9 million that was -- what
22 was proposed to be the 2021 pension settlement loss
23 expense?

24 A. Under the company's proposal -- and I just
25 want to repeat that we are looking at total company

1 amounts here. Utah's, you know, 43, 44 percent of it.
2 What we would do is we would have the base set, with what
3 is included in rates of 7.9 million total company, we
4 would collect what is actually expensed, which is the
5 11.9 million.

6 So I think we would be doing what a balancing
7 account is supposed to do, which is look at the amount in
8 rates and look at the actual expenses.

9 Q. Okay. So if the 2021 pension settlement loss
10 is \$11.9 million, which, again, was the amount that the
11 company indicated was the amount that it expected to
12 incur in the 2021 test year, if that is what comes to
13 pass, the company's proposed balancing account is the
14 only one that will result in an amount being deferred; is
15 that correct?

16 A. That is correct. And I believe that it's
17 reflecting the correct difference, as I have stated,
18 between what is in rates versus what is in expense.

19 Q. Okay. Let's assume a slightly different
20 hypothetical. Let's assume -- and I know you said we are
21 not there yet, but you assume the 2021 test year will
22 result in something like the 11.9 million.

23 But let's assume we have a calendar year
24 during the rate effective period in which the actual
25 pension settlement loss is zero dollars. If the

1 balancing account is established as the division and the
2 office proposed, there would be a credit, and maybe I am
3 using the wrong term here, of \$11.9 million in that
4 deferred account. Right?

5 A. Right. Under their proposal, we would give
6 customers back 11.9 million, even though there's only 7.9
7 million embedded in the rates.

8 Q. And if the commission adopts the company's
9 proposal, a calendar year in which there is zero dollars
10 in actual pension settlement loss, customers would get a
11 credit of what amount?

12 A. Can you repeat that?

13 Q. Sure. In a calendar year in which there is
14 zero dollars in actual pension settlement loss, what
15 would be the amount that is deferred to that deferred
16 account?

17 A. We would defer the full 7.9 million that is
18 imbedded in customer rates.

19 Q. And you would do the same thing if the
20 commission adopted UAE's proposal, that same \$7.9 million
21 would be deferred; is that right?

22 A. Yes, under that one scenario. Yes.

23 Q. Okay. I want you to turn to your rebuttal
24 testimony starting at line 85, if you would, please.

25 A. Okay.

1 Q. You state there -- you or Mr. Highsmith
2 respond to a question about why you didn't notify the
3 commission of the capitalization error during the general
4 rate case. And state that, quote: Updating the
5 calculation of the revenue requirement in the 2021 GRC
6 for pension settlement loss would have resulted in higher
7 requested rate change for customers.

8 Can you explain how updating the calculation
9 of the revenue requirements to address this error would
10 have resulted in higher requested rate change?

11 A. Yes. If you look at the way the adjustment
12 flowed through the rate case, what we would have done is
13 we would have taken that \$11.9 million, and rather than
14 subtracting 30 percent of it and assuming that it was
15 going to be capitalized, we would have not subtracted
16 that. So we would have left the full \$11.9 million in
17 revenue requirement, which would have increased the case.

18 Q. Thank you. And if the company's proposal in
19 this docket is adopted, won't that result in a higher
20 requested rate change for customers in the next general
21 rate case?

22 A. The next general rate case, regardless of
23 what is done here, we will -- hopefully we've learned
24 from our errors, and we will not make the same error
25 again.

1 So yes, in the next rate case, if there is a
2 settlement loss, we will account for it correctly.

3 Q. Well, that doesn't really answer my question.
4 As compared to the proposals offered by all of the other
5 parties here, adopting the company's proposal would
6 result in a higher rate change for customers in the next
7 general rate case, wouldn't it?

8 A. No. Regardless of what proposal is adopted
9 here, the base rate change in the next rate case will be
10 the same. We will have the same base rates from this
11 case. We will have the same base rates proposed in the
12 next rate case. The next rate case will be the same size
13 and the same magnitude.

14 Q. Well, I guess I'm asking you to compare what
15 happens to the balancing accounts, as we have just done
16 previously. In the company's proposal, there will always
17 be -- scratch that.

18 In the company's proposal, as compared to the
19 proposals of the division and the office, after every
20 year, after every calendar year, the company's proposal
21 will return -- will have a balance in the deferred
22 account that is higher than the balance that would be
23 proposed by the division and the office; isn't that
24 correct?

25 A. If the balance is positive, yes. As noted

1 earlier, it can go positive or negative, but either way,
2 it will be a higher relative balance.

3 Q. Okay. And then between now and the next rate
4 case, you keep track of that balance from year to year.
5 And then what does the company propose to do with that
6 balance in the deferred account, in the next rate case?

7 A. In the next rate case, it would be part of
8 the general rate case proceeding, just like all other
9 items. The company would look at the balance, and other
10 parties would look at the balance, and we would come up
11 with a proposal of how to amortize it.

12 And a lot of how we do that would depend upon
13 the size, what other items are there. Are there things
14 that can offset? We would look at the whole range of
15 options.

16 Q. Okay. And so sitting here today, what you
17 are saying is that that won't result in a higher
18 requested rate change for customers in the next rate
19 case, as compared to the division's and the office's
20 proposal, which would have a smaller balance?

21 A. A lot of that also depends on whether we
22 reach materiality between the rate cases, and it's
23 already given back. So you are making a whole bunch of
24 assumptions, but I don't -- and therefore, I cannot state
25 exactly what is going to happen.

1 Q. Well, I am not asking you to have perfect
2 foresight here, Mr. McDougal. I am just asking: If
3 there's a higher balance in this deferred account versus
4 a scenario in which there is a lower balance, in a higher
5 balance in a deferred account, assuming it gets carried
6 forward all the way to the next rate case, doesn't
7 that -- wouldn't that result in a higher requested rate
8 change?

9 A. Yes, if we have not done anything with the
10 balance in between, a higher balance will result in a
11 higher cost. And depending on how it's amortized or what
12 it's used for would impact rates in a different
13 magnitude. But overall, it would result in a higher
14 amount.

15 Q. Okay. I'm going to ask you to turn, again in
16 your rebuttal testimony, to lines 88 -- starting at line
17 88.

18 The question there is -- and I will just read
19 the question and the first part of the answer. And the
20 question is, "Is it true that the company would correct
21 its own error if the PSA base were set at the company's
22 proposed \$7.9 million?"

23 And the answer is, "Technically, yes, but it
24 is important to consider the context. First and
25 foremost, I believe it is important to take into

1 consideration the company's primary recommendation in the
2 GRC was to include the amount in base rates without a
3 balancing account."

4 Now, you indicate that it was the company's
5 primary -- that was the company's primary recommendation,
6 to go forward without a balancing account. And that was
7 the primary recommendation when you filed the case and
8 when you filed rebuttal testimony. Right?

9 A. Correct.

10 Q. And when I say "you" here, I recognize that
11 you, as an individual witness, filed -- filed direct and
12 rebuttal testimony. I just mean the company generally?

13 A. That is correct.

14 Q. Okay. And that remained your primary
15 recommendation through the -- through the commission's
16 orders. Right?

17 A. That is correct.

18 Q. Now, was the -- and as has been pointed out
19 in testimony and in some of the cross-examination you
20 have received, the company was aware of the accounting
21 error prior to filing the rebuttal testimony in the rate
22 case. Right?

23 A. That is correct.

24 Q. And it was during rebuttal testimony that the
25 company proposed its secondary, I guess we'd say,

1 proposal, which was to include a balancing account.

2 Right?

3 A. Yes. And at that point in the case, based
4 upon the recommendations of other parties, we
5 recommended, as a secondary option, a full balancing
6 account of all pension expenses.

7 Q. Right. And that wasn't strictly the
8 balancing account that we are dealing with here. It was
9 a much broader balancing account that the commission
10 elected not to adopt.

11 But let's go back to your primary
12 recommendation, which was to include the dollars,
13 whatever they are, in rates, however they are included,
14 with no balancing account to true that up. Right?

15 A. Correct.

16 Q. And if no balancing account had been adopted,
17 the company would collect whatever dollars are included
18 in the rates, and there would be no opportunity to
19 collect additional amounts for pension settlement loss
20 between now and the next rate case. Correct?

21 A. That is correct.

22 Q. Okay. And so if the actual pension
23 settlement loss that the -- that occurs in 2021 matches
24 what the company said it expected would be the pension
25 settlement loss, the \$11.9 million, you have testified

1 today that if that occurs, you are under-recovering; is
2 that your testimony?

3 A. Yes, it is.

4 Q. Okay. Sorry, go ahead.

5 A. Keep in mind that, like, the revenue
6 requirement, there is a combination of everything. But
7 on that specific item, yes, we are under-recovery.

8 Q. On that specific item. But you acknowledge
9 that that was an acceptable outcome to the company during
10 the rate case. Right?

11 A. I wouldn't say that it's ever acceptable, in
12 my opinion, to make an error, but it was an outcome that
13 we were willing to live with at that point.

14 Q. Right. And it was -- you were willing to
15 live with it because you knew about it, and you chose not
16 to notify the commission -- I mean as you said earlier,
17 it would have resulted in an increased rate request.
18 Right?

19 A. That is correct.

20 Q. And I'll ask you to turn to the second point
21 you make in that Q&A there. Starting at line 93, you
22 say, "Secondly, the intent of the balancing account
23 should be considered. The 2021 GRC order stated that,
24 quote: Pension settlement losses that that RMP incurs in
25 the test year are not sufficiently representative of the

1 costs RMP is likely to incur in subsequent years, and
2 that pension settlement losses are uniquely unpredictable
3 and volatile.

4 "It is apparent that the commission has
5 determined that pension settlement losses are a prudent
6 expense, and the purpose of the balancing account is to
7 ensure pension settlement losses are not over nor
8 under-collected from customers."

9 Did I read that right, more or less?

10 A. Yes.

11 Q. Okay. So you quote there from the commission
12 order dated December 30th of 2020. Right?

13 A. Yes.

14 Q. And it was after the commission issued this
15 order that UAE filed its petition for rehearing, seeking
16 clarification on the amount of pension settlement loss
17 included in rates. Right?

18 A. Yes.

19 Q. And it was after that, that Rocky Mountain
20 Power responded to that by petition -- but emphatically
21 stating that \$11.9 million in pension settlement loss was
22 in rates. And quote: It could not be more clear that
23 the initial amount of the balancing account is \$11.9
24 million. Right?

25 A. Could you give me the exact quote?

1 Q. Sure. And I will tell you that I am reading
2 from page -- let me get there, from page 13 of the
3 company's response to the UAE's petition. It states, "It
4 could not be more clear that the initial amount in the
5 balancing account is \$11.9 million."

6 A. I agree that is what you just read. I have
7 not read the paragraphs before or after, so I am a little
8 bit -- I would want to read the whole context, but just
9 reading that sentence, I do agree that that's what you
10 have read, and I do not agree that that's what's in
11 rates.

12 Q. I'm actually going to a point -- to a passage
13 earlier in that filing that this company submitted in
14 response to UAE's petition, and this is on page 8 of that
15 petition -- or excuse me, of that response, under a
16 header that states, quote: There is no basis to
17 reconsider the decision to allow full recovery of the
18 pension settlement loss in rates.

19 And in the first couple of sentences, the
20 company addresses a previous docket, Docket No.
21 18-035-48. And then states in the last two sentences of
22 that first paragraph, "Therefore, consistent with the
23 positions of the parties and the commission in Docket No.
24 18-035-48, the company proposed to recover its test
25 period pension settlement loss in rates in its general

1 rate case. It proposed that the amount it projected
2 would be required to be expensed in the test period,
3 \$11.9 million, be included in full in rates.

4 Is that consistent with your testimony today?

5 A. Looking at that one part in isolation -- and,
6 again, I have not read everything -- no, the amount that
7 is included in rates is 7.9 million.

8 Q. Going back to your rebuttal testimony, where
9 you have cited some language from the December 30, 2020
10 order, you say, "It was apparent from that order that the
11 purpose of the balancing account was to ensure pension
12 settlement losses are neither over-collected or
13 under-collected."

14 And the company's position after that point
15 was that it could not be more clear that the initial
16 amount in the balancing account should be 11.9 million.

17 Why wouldn't that be the initial amount in
18 the balancing account? If that was the sequence of
19 events, that the company knew about this error in its
20 case, didn't bring it to the commission's attention, and
21 then stated that the initial amount should be 11.9
22 million?

23 A. I think you are combining data from a lot of
24 different sources, and I -- the way you are asking the
25 question, you are combining everything from different

1 parts and it is not really a comparable question. I
2 think I have already answered that the amount that is
3 included in rates is the 7.9 million, and that's what I
4 believe is the appropriate balance, because that is
5 what's in rates.

6 Q. Thank you. No further questions.

7 COMMISSIONER LEVAR: Thank you. Thank you,
8 Mr. Russell.

9 Why don't we break until 11:30? And then we
10 will return for any redirect for this witness.

11 (Whereupon, a break was taken.)

12 COMMISSIONER LEVAR: We will go to
13 Ms. Wegener for any redirect of Mr. McDougal.

14 MS. WEGENER: I have no redirect.

15 COMMISSIONER LEVAR: Okay. Thank you.

16 Commissioner Allen, do you have any questions
17 for Mr. McDougal?

18 COMMISSIONER ALLEN: I have a question about
19 procedures of the company. I am just curious -- because
20 you talk about how complicated this is, and I can only
21 image hundreds of pages of spreadsheets. But I am
22 curious, when you reach milestones in a spreadsheet,
23 meaning you have a major decision that is based on a FASB
24 or FERC accounting rule, do you annotate your
25 spreadsheets, or do you put citations in there so people

1 using them have a heads-up, or is that a totally separate
2 part of the library that you work in?

3 THE WITNESS: It is somewhat separate -- just
4 after you tell me, I don't even turn the mic on after.

5 It's a somewhat separate proceeding, in that
6 we have our whole technical accounting group, which is
7 under Nikki Kobliha and the finance, and they do all the
8 financial accounting standards.

9 Where my group, we deal with strictly
10 regulation. And so we work with them, we talk with to
11 them, but sometimes, like on this here, we just -- these
12 had been capitalized, we just assumed they still were,
13 and so we showed them the work, but it was just never
14 caught by people that we were including costs that should
15 not have been in there.

16 COMMISSIONER ALLEN: All right.

17 THE WITNESS: So they do a lot of -- you
18 know, on the accounting books, they do. On the
19 adjustments, they see what we're doing. They just didn't
20 catch that on the adjustment what we were doing wrong.

21 COMMISSIONER ALLEN: Okay. And if I'm
22 reading the dates right in testimony, though, that change
23 in what was allowed in the way you should be capitalizing
24 in pensions, it was actually -- that change was about
25 three year old before you came across it?

1 THE WITNESS: Yes.

2 COMMISSIONER ALLEN: Okay. Thank you.

3 COMMISSIONER LEVAR: Commissioner Clark?

4 COMMISSIONER CLARK: I am going to remove my
5 mask, just to make sure that I can be heard.

6 I want to read you, Mr. McDougal, a sentence
7 from the initial order, the December 30th order, of the
8 commission in the most recent Rocky Mountain Power
9 general rate case.

10 And I think it has been established that you
11 were intimately involved with that case, were, in effect,
12 the manager of that case for the company and lead
13 witness; is that correct?

14 THE WITNESS: On the revenue requirement,
15 yes.

16 COMMISSIONER CLARK: Okay. So reading from
17 page 30, and I acknowledge I am going over ground that
18 has been plowed, but in a way that will help me to absorb
19 it perhaps a little better -- absorb your answers better,
20 the sentence that appears in the middle of the page at
21 the first paragraph on page 30 says this: Here, RMP,
22 Rocky Mountain Power in other words, forecast test year
23 pension losses of 11.9 million and RMP's preferences to
24 include this full amount as a component of pension
25 expense.

1 Do you agree that accurately characterizes
2 the evidence and testimony that the commission received
3 from the company in the rate case?

4 THE WITNESS: Yes.

5 COMMISSIONER CLARK: On this -- on this
6 narrow issue?

7 THE WITNESS: Yes, the 11.9 million was the
8 projected pension settlement loss.

9 COMMISSIONER CLARK: And that the company
10 expressed the preference that it be recovered in rates --

11 THE WITNESS: Yes.

12 COMMISSIONER CLARK: -- as an expense?

13 THE WITNESS: Yes, we requested that we
14 amortize it -- well, we requested that it be recovered,
15 yes.

16 COMMISSIONER CLARK: And then skipping now to
17 the page 32, the paragraph that concludes the discussion
18 of this issue in the order, the first sentence is, "In
19 sum, RMP may recover the is 11.9 million in settlement
20 losses it anticipates incurring during the test year in
21 rates, effective January 1, 2021."

22 I assume you can confirm that I have read
23 that correctly. You are familiar with the sentence, I'll
24 bet?

25 THE WITNESS: I am very familiar with that

1 second paragraph, yes.

2 COMMISSIONER CLARK: Okay. And in its
3 pleadings or papers filed in response to, or in
4 connection with, applications for rehearing, did the
5 company, in any way, challenge the correctness of the two
6 sentences that I've read, as being what the company
7 intended and what the commission ordered?

8 THE WITNESS: Thinking back over it, I cannot
9 recall anything. I just remember that it was addressed
10 that we would establish the baseline here. But I do not
11 recall anything specifically to what you are asking that
12 we contradicted it.

13 COMMISSIONER CLARK: In fact, in the -- at
14 least in the sentences that counsel for UAE read to you,
15 assuming their correctness, they -- the company, in fact,
16 reaffirmed or asserted the truthfulness of that sentence
17 and what was being accomplished through the rate case
18 order, in terms of recovery the 11.9 million; is that
19 correct?

20 THE WITNESS: Yes, I think it's obvious that
21 there were some things in that document that were not
22 worded the way they should have been worded.

23 COMMISSIONER CLARK: If the commission
24 determines that this factual difference, this error as
25 you, I think, characterized it, should not be corrected

1 at this stage, given the finality of the rate case and
2 the absence of our consideration of unstated other errors
3 that other parties might assert, and if we begin with
4 11.9 million as the -- I will call it the threshold
5 amount or the beginning balance, or the amount against
6 which expenses in future periods are measured -- let me
7 say that differently.

8 If we assume that 11.9 million is in rates as
9 the pension settlement loss, what will be the effect on
10 the company? And before you answer the question, maybe a
11 simpler way to ask it is: Is it correct that the effect
12 will be to deny, excuse me, the company the opportunity
13 to recover immediately the loss, which will then be
14 deferred for recovery in some subsequent amortization
15 period; do I understand the effect correctly?

16 THE WITNESS: No. If we don't recover it
17 through this proceeding, it will not be deferred for a
18 future proceeding.

19 So if I understand you correctly, the amount
20 that we actually expense in 2021 or 2022, in any period
21 prior to the next rate case, that amount will be lost,
22 and the company will not recover it, unless it is
23 deferred as part of this mechanism.

24 The company would recover it, starting with
25 the rate effective date of the next rate case, but not

1 until then. The parts between now and then would not be
2 deferred. So that -- those dollars would, in effect, get
3 lost, and it would have to -- the company would look at
4 it like all other amounts in determining whether to file
5 a rate case. But we would not recover it in the interim
6 or defer it in the interim.

7 COMMISSIONER CLARK: Those conclude my
8 questions. Thank you, Mr. McDougal.

9 COMMISSIONER LEVAR: Thank you.

10 I just have a couple -- maybe three. You
11 know, there's been pretty open discussion about the error
12 made in the general rate case. Did the commission make
13 an error in the declining to make the revenue requirement
14 adjustment that UAE was asking us to make on
15 reconsideration?

16 THE WITNESS: I would have to look back at
17 the -- what exactly they were requesting, because I don't
18 remember exactly. I'm sorry.

19 COMMISSIONER LEVAR: Okay. Thank you.

20 I am pretty certain this was covered in
21 Mr. Russell's cross-examination, but I just want to make
22 sure I understand it.

23 So if the thresholds from the financial
24 accounting standards, the board's thresholds for
25 immediate recognition of a portion of the

1 unrecognized actuarially losses, if that threshold is not
2 met in any specific year, then would the balancing
3 account reflect zero in actual pension settlement losses
4 for that year?

5 THE WITNESS: Yes.

6 COMMISSIONER LEVAR: Okay. And then one
7 minor question, if you -- do you have your Exhibit 1 from
8 Mr. Hightower's direct?

9 THE WITNESS: Yes.

10 COMMISSIONER LEVAR: Sorry, Highsmith, I
11 mispronounced his name.

12 THE WITNESS: However, he's left the company.
13 You can mispronounce his name.

14 COMMISSIONER LEVAR: I wouldn't want to.

15 This was something that was identified by our
16 technical staff as a potential issue on Exhibit 1, line
17 14. Our staff identified that it's possible that
18 carrying charge 4.37 should have been 3.88, under a TO-1
19 docket in 2020.

20 Do you know, off the top of your head,
21 anything about that?

22 THE WITNESS: I don't. I hadn't checked into
23 that. It should be using the rate from the latest
24 docket. If it's not, it is an error.

25 COMMISSIONER LEVAR: Okay. Thank you.

1 That's all the questions I have.

2 Thank you for your testimony, Mr. McDougal.

3 THE WITNESS: Thank you.

4 COMMISSIONER LEVAR: Ms. Wegener, anything
5 else?

6 MS. WEGENER: Nothing at this time.

7 COMMISSIONER LEVAR: Okay. Thank you.

8 Mr. Jetter?

9 MR. JETTER: Mr. Chairman, would you prefer
10 that the division witness be on the witness stand over
11 here or at counsel table?

12 COMMISSIONER LEVAR: If he's comfortable at
13 the witness stand, I think we are better off in this
14 hearing going that way.

15 MR. JETTER: Okay. The division would like
16 to call then, and have sworn in, Mr. Jeffrey Einfeldt.

17 COMMISSIONER LEVAR: Good morning,
18 Mr. Einfeldt.

19 MR. EINFELDT: Morning.

20 DIRECT EXAMINATION

21 JEFFREY EINFELDT,

22 called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 COMMISSIONER LEVAR: Thank you.

25 BY MR. JETTER:

1 Q. Mr. Einfeldt, would you please start by
2 stating your name and occupation for the record at this
3 hearing?

4 A. My name is Jeffrey S. Einfeldt. I am a
5 utility technical consultant with the Division of Public
6 Utilities.

7 Q. Thank you. And have you had an opportunity
8 to review the pleadings in this docket?

9 A. Yes, I have.

10 Q. And did you create and cause to be filed
11 direct testimony and surrebuttal in this docket?

12 A. Yes.

13 Q. Do you have any corrections or changes you
14 would like to make to these pre-filed testimonies?

15 A. I have one correction in my direct testimony,
16 and it refers to a footnote. It will be on page 2,
17 footnote No. 4. It states Docket No. 20-035-04,
18 confidential order, page 29. And it should also -- it
19 should read page 29 and 30. That's it.

20 Q. Thank you. Hopefully, everyone had a chance
21 to take note of that.

22 If you were asked the same questions in those
23 pre-filed testimonies as you have identified, would your
24 answers be the same today?

25 A. Yes.

1 Q. Thank you.

2 MR. JETTER: With that, I would like to move
3 to enter into the record of the hearing the pre-filed
4 testimony as identified that were filed by Mr. Einfeldt.

5 COMMISSIONER LEVAR: Thank you. If anyone
6 objects to that motion, please indicate your objection.

7 I'm not seeing any, so the motion is granted.

8 MR. JETTER: Thank you.

9 BY MR. JETTER:

10 Q. Mr. Einfeldt, have you prepared a brief
11 summary of your testimony?

12 A. yes, I have.

13 Q. Please go ahead.

14 A. The division generally supports the creation
15 of the balancing account for the pension settlement
16 adjustments and believes the balancing account concept
17 outlined in this case is just, reasonable, and in the
18 public interest.

19 The division does not agree that the base
20 amount to be trued-up annually should be the 7.9 million
21 proposed by Rocky Mountain Power. The division believes
22 the base amount should be 11.9 million, the amount
23 requested by Rocky Mountain Power in its most recent
24 general rate case and the amount that was approved by the
25 commission.

1 In the subsequent petition for review or
2 rehearing, Rocky Mountain Power again reaffirmed that
3 11.9 million for pension settlement losses was included
4 in rates, and, again, persuaded the commission to confirm
5 its order in favor of Rocky Mountain Power.

6 The specific discrepancy between 11.9 million
7 sought by Rocky Mountain Power and the 7.9 million
8 calculated in the supporting work papers and the
9 calculation of the revenue requirement was brought to the
10 attention of Rocky Mountain Power in the general rate
11 case; and, again, in the petition for review or
12 rehearing.

13 Rocky Mountain Power had the opportunity but
14 actively chose not to correct the discrepancy. Having
15 chosen not to correct its mistake in the general rate
16 case, Rocky Mountain Power seeks to do so here. To allow
17 the correction now would constitute retroactive rate
18 making and single-issue rate making, eroding the
19 authority and reliability of the rate making process and
20 the commission's orders.

21 The 4 million discrepancy is based off total
22 company calculations. Utah's portion of this error is
23 approximately 1.74 million and does not rise to the level
24 to justify a departure from the general prohibition from
25 retroactive rate making or single-item rate making.

1 To allow Rocky Mountain Power to use a base
2 amount for pension settlement adjustments of 7.9 million,
3 rather than the sought for and approved 11.9 million,
4 would not be just, reasonable, or in the public interest.

5 This concludes my summary. Thank you.

6 Q. Thank you, Mr. Einfeldt.

7 MR. JETTER: I have no further questions, and
8 Mr. Einfeldt is available for cross-examination and
9 questions from the commissioners.

10 COMMISSIONER LEVAR: Thank you, Mr. Jetter.

11 Mr. Moore, any questions?

12 MR. MOORE: No questions. Thank you.

13 COMMISSIONER LEVAR: Mr. Russell?

14 MR. RUSSELL: Just a couple of brief ones.

15 CROSS-EXAMINATION

16 BY MR. RUSSELL:

17 Q. Mr. Einfeldt, your testimony includes a
18 number of statements about the importance of the prior
19 adjudication and the importance of upholding what this
20 commission had previously ruled.

21 Does that -- I don't want to put words in
22 your mouth. Is that an accurate description of some
23 portions of your testimony?

24 A. Yes.

25 Q. Okay. And I guess I would like for you to

1 explain why you think that's important here, in the face
2 of company's articulation of what's actually included in
3 rates?

4 A. I believe primarily the sanctity of the rate
5 making process and the ordering process and the finality
6 of those, when they are concluded, so third parties can
7 rely on those orders. And it goes also -- not just Rocky
8 Mountain Power but other regulated entities. It would
9 have an affect on other regulated entities also.

10 Q. Great. Thank you. I want you to -- I want
11 to address with you a portion of your surrebuttal
12 testimony, starting on line 98.

13 A. Okay.

14 Q. There, you state that you considered using
15 the \$7.9 million base amount and adjusting the actual
16 annual pension amount by the same capitalization
17 percentage used by RMP to derive the 7.9 million, but
18 ultimately rejected it because it, quote: Perpetuates
19 the erroneous capitalization of pension cost that give
20 rise -- or gave rise to the 4 million discrepancy in the
21 first place.

22 Now there, you are indicating that you
23 considered the proposal that Mr. Higgins has put forward;
24 is that right?

25 A. That's correct.

1 Q. Okay. I would like to discuss that with you
2 for a bit. You state in your testimony that the
3 company's general rate case proposal contained an error,
4 and that it capitalized a portion of its pension
5 settlement loss that was included in the wage and
6 benefits portion of the labor cost. Right?

7 A. Yes, there was a disconnect or a discrepancy
8 between what they claimed on the 11.9 million and then
9 what was included in the work papers.

10 Q. Right. So that error is now baked into the
11 rates; is that correct?

12 A. Yes.

13 Q. So wouldn't it be consistent with -- I will
14 start over.

15 You also state in your testimony that this
16 proceeding should not be used as a vehicle to correct
17 that error. Right?

18 A. That's correct.

19 Q. Okay. So wouldn't it be consistent with that
20 point that the balancing account shouldn't be used to
21 correct an error made in the general rate case? Wouldn't
22 it be consistent with that notion, to continue to impose
23 that capitalization factor going forward, rather than to
24 correct it for one part of the balancing account, the
25 actual pension expense, and not to the other, the initial

1 balance?

2 A. I'm not sure I understand the question fully.

3 Q. Sure. I can try to break it into smaller
4 parts.

5 The proposal that you put forward on behalf
6 of the division is to have the initial amount in the
7 balancing account be the \$11.9 million; is that right?

8 A. That's correct.

9 Q. Okay. And the actual pension expense that
10 will be incurred, you propose no adjustment to that so
11 that after any given calendar year, you will compare the
12 \$11.9 million that the company requested to be included
13 in rates, you are going to compare that to whatever the
14 actual pension expense is after the calendar year.
15 Right?

16 A. That's correct.

17 Q. Okay. And I guess the question that I am
18 trying to ask is: Why do you believe that it perpetuates
19 the error that the company -- that the company had in
20 rates by not -- not imposing the same kind of
21 capitalization factor to those actual pension expenses,
22 both on the initial and on the actual pension portions of
23 the balancing account?

24 A. Initially, as the division considered this
25 scenario, this scenario that I address in these lines in

1 my testimony, to start with that 7.9 million and then
2 also apply a capitalization rate to any new or any actual
3 reported pension losses going forward was, it seemed to
4 us, to perpetuate the erroneous capitalization, if you
5 will, going forward.

6 So it allowed that to just continue, and so
7 we are still wrong, you know, by accounting standards,
8 FASB accounting standards.

9 It also -- there were also other issues that
10 we identified with that possible scenario. It still
11 undermined the reliability of the commission's orders.
12 We felt like we would still be out of compliance with the
13 actual order. And it also alters the base rates outside
14 of the general rate case, as I've -- that I stated in my
15 testimony.

16 So those three issues, it wasn't just the
17 one, because part of me, as the accountant, it's like,
18 okay, in order to preserve the continuity of the numbers
19 and the comparability of the numbers, we would want to do
20 something like that. But it left us deficient, in our
21 minds, with those other areas.

22 Q. Just one follow up to that. How would the
23 proposal articulated by Mr. Higgins have any effect on
24 the base rates that are currently in place?

25 A. When you say "base rates that are currently

1 in place," are you referring to the 7.9 million that's in
2 there -- that's derived from the work papers?

3 Q. No. I was merely repeating back what I
4 thought I heard you say about your third point, that
5 Mr. Higgins' proposal would somehow undermine the base
6 rates.

7 A. The effect of using 7.9 million, rather than
8 the 11.9 million, would have an affect of -- affectively
9 increase the revenue requirement calculation and the
10 recovery requirement -- recovery, and that is what I am
11 referring to.

12 Q. But not until after the next general rate
13 case. Right? Or not until after some further proceeding
14 where we address the amount in the deferred account.
15 Right?

16 A. I am not sure I understand the question and
17 the application that you are proposing. But if I can,
18 the effect would be the company could, at least -- if 7.9
19 million, under the company's proposal, is accepted, that
20 would affectively increase their revenue requirement
21 recovery, or what would be incurred for the revenue
22 requirement on the revenue side, effectively by \$4
23 million.

24 Even though it would be deferred and maybe
25 not actually collected, it would be incurred currently.

1 Q. Okay. I think you and I are on the same page
2 now. Thanks. I appreciate it.

3 MR. RUSSELL: Nothing further.

4 COMMISSIONER LEVAR: Thank you.

5 Ms. Wegener?

6 MS. WEGENER: Yes, I just have one question,
7 I think.

8 CROSS-EXAMINATION

9 BY MS. WEGENER:

10 Q. Mr. Russell talked to you about the \$4
11 million discrepancy being baked into rates. Do you
12 remember that?

13 A. Yes, assuming that \$7.9 million was used or
14 derived in the work paper calculations to calculate, if I
15 recall, the \$95 million revenue requirement that was
16 sought, subject -- the 95 million being subject to check.

17 Q. Do you claim anywhere in your testimony that
18 that \$4 million is included or recovered in the revenue
19 requirement that was approved in the 2020 GRC?

20 A. I don't believe so.

21 Q. Okay. And do you believe that?

22 A. Do I believe what?

23 Q. That the \$4 million is included in the
24 revenue requirement approved in the --

25 A. No, I don't.

1 Q. Thank you. That's all I have.

2 COMMISSIONER LEVAR: Mr. Jetter, any
3 redirect?

4 MR. JETTER: No redirect. Thank you.

5 COMMISSIONER LEVAR: Okay. Thank you.

6 Commissioner Clark, any questions for
7 Mr. Einfeldt?

8 COMMISSIONER CLARK: No questions. Thank
9 you.

10 COMMISSIONER LEVAR: Commissioner Allen?

11 COMMISSIONER ALLEN: Sorry, my mic button is
12 backwards. Can you hear me? I have to remember
13 backwards.

14 COMMISSIONER LEVAR: It is on.

15 COMMISSIONER ALLEN: Okay.

16 COMMISSIONER LEVAR: And yes, they are
17 backwards.

18 COMMISSIONER ALLEN: Thanks.

19 This is just a follow up to a question that
20 Commissioner Clark asked earlier, when he asked about
21 what happens to the \$4 million and then the conversation
22 we just had about it being baked in rates.

23 Is it true that they can never be recovered,
24 or can that come up again in a future general rate case?
25 When I heard Mr. McDougal's answer, I kind of thought I

1 heard it both ways.

2 THE WITNESS: My understanding, if it is
3 determined that 11.9 million is to be used as the base
4 amount in this proceeding, the company would then not
5 recover \$4 million each year on a company total basis,
6 which is -- Utah's portion is 1.7 million of that, and
7 that would not be recovered. It would not be deferred.

8 And then recovered in the future rate case,
9 that would be forfeited for each of the years until the
10 next rate case or the next effective rates.

11 COMMISSIONER ALLEN: Okay. Until the next
12 rate case?

13 THE WITNESS: Right.

14 COMMISSIONER ALLEN: Okay. Thank you.

15 COMMISSIONER LEVAR: Okay. Thank you. I
16 don't have any further questions. Thank you for your
17 testimony this morning, Mr. Einfeldt.

18 THE WITNESS: Thank you.

19 COMMISSIONER LEVAR: Mr. Jetter, anything
20 else from you?

21 MR. JETTER: Nothing further from the
22 division, Mr. Chairman. Thank you.

23 COMMISSIONER LEVAR: Okay. Thank you.

24 Mr. Moore?

25 MR. MOORE: Yes. The office calls Donna

1 Ramas to the stand and ask that she be sworn.

2 DIRECT EXAMINATION

3 DONNA RAMAS,

4 called as a witness, having been first duly sworn,

5 was examined and testified as follows:

6 COMMISSIONER LEVAR: Oh, I will note, we all
7 know there is confidential information in her testimony.
8 If you intend to address it in her summary, in your
9 summary, or if anyone's questions go to any other
10 confidential information, please take a break so we can
11 deal with that in the connection of this hearing. Thank
12 you.

13 BY MR. MOORE:

14 Q. Could you please state your name and
15 occupation?

16 A. My name is Donna Ramas. I am a regulatory
17 consultant.

18 And if anyone has trouble understanding me,
19 let me know.

20 COMMISSIONER LEVAR: It seems pretty clear to
21 me when you are close to the microphone, so I think we
22 are good.

23 THE WITNESS: Okay.

24 BY MR. MOORE:

25 Q. Who are you testifying on behalf of today?

1 A. The Utah Office of Consumer Services.

2 Q. And in your role as a consultant to the Utah
3 Office of Consumer Services, did you prepare and cause to
4 be filed direct public and confidential testimony,
5 together with both public and confidential exhibits, on
6 July 22, 2021, and both public and confidential
7 surrebuttal testimony on August 3, 2021?

8 A. Yes, I did.

9 Q. Do you have any changes you would like to
10 make to your testimony at this time?

11 A. No, I do not.

12 Q. If I would ask you the same questions, would
13 your answers be the same?

14 A. Yes.

15 MR. MOORE: And at this point, the office
16 moves to admit the June 22nd direct testimony, public and
17 confidential testimony and exhibits, with the
18 January -- with August 3, 2021, surrebuttal testimony.

19 COMMISSIONER LEVAR: If anyone objects to
20 that motion, please indicate your objection.

21 I am not seeing any, so the motion is
22 granted.

23 And, Mr. Moore, I don't think we are picking
24 you up on the streaming right now.

25 MR. MOORE: I apologize.

1 BY MR. MOORE:

2 Q. Have you prepared a summary of your testimony
3 you would like to present at this time?

4 A. Yes, I have.

5 Q. Please proceed.

6 A. Good morning, Chair LeVar, and Commissioners
7 Allen and Clark.

8 The purpose of this proceeding is to
9 establish a pension settlement adjustment balancing
10 account as directed by this commission in your recent
11 rate case order, issued in Docket No. 20-035-04 on
12 December 30, 2020.

13 The purpose of the balancing account is to
14 allow for the true-up of the difference between the
15 actual amount of forecasted pension settlement losses
16 included for recovery and rates, effective on January 1,
17 2021, and the actual amount of pension settlement
18 adjustments realized by Rocky Mountain Power each year.

19 Whether or not the balancing account results
20 in a regulatory asset or regulatory liability depends on
21 how the actual amount of pension settlement adjustments
22 experienced by the company compares to the amount of
23 forecasted pension settlement losses included in rates.

24 I recommended that the annual amount to be
25 recorded in the new balancing account be calculated based

1 on the difference between 11.9 million of forecasted
2 pension settlement loss, specifically approved by the
3 commission for recovery in its recent rate case order,
4 and the actual amount of pension settlement loss or gain
5 realized by the company.

6 The appropriate Utah jurisdictional
7 allocation factor should be applied to the total company
8 amounts in determining the amount to be recorded in the
9 balancing account. To avoid potential confusion, the
10 dollar amounts I discussed in the summary are on a total
11 company basis, unless I state otherwise.

12 The key issue for the commission to decide in
13 this case is the dollar amount of pension settlement
14 losses included for recovery and rates, which I'll refer
15 to as the base amount. It is this base amount that the
16 actual pension settlement losses or gains will be
17 compared to in calculating the amount to be deferred in
18 the balancing account.

19 In the December 30, 2020, order issued in
20 this -- in the recent rate case, at page 32, the
21 commission explicitly stated, and I quote: In sum, RMP
22 may recover \$11.9 million in settlement losses it
23 anticipates incurring during the test year in rates,
24 effective January 1, 2021.

25 However, RMP will establish a balancing

1 account and true-up on an annual basis the pension
2 settlement adjustments that it actually recognizes, with
3 the amount that it recovered in rates, end quote.

4 I recommend that the \$11.9 million that this
5 commission explicitly stated RMP may recover in rate be
6 established as a PSABA base amount.

7 While the commission's order states RMP may
8 recover \$11.9 million in rates, Rocky Mountain Power
9 contends it is only recovering \$7.9 million in rates. In
10 his direct testimony, RMP witness Highsmith, which has
11 been adopted by Mr. McDougal, explains that the company
12 assumed approximately 33.3 percent of the \$11.9 million
13 forecasted pension settlement loss would be capitalize in
14 its rate case filing.

15 He also explain that the capitalization of
16 the pension settlement loss is not permitted under
17 accounting rules that were effective starting January 1,
18 2018. In other words, the company's rate case filing
19 included an error when it applied the capitalization
20 factor to the forecasted test year pension settlement
21 losses since such costs are not capitalized by the
22 company on its books.

23 If the calculation and annual deferral in the
24 balancing account is based on the \$7.9 million proposed
25 by the company, it would make whole for the error

1 contained in its rate case filing through the operation
2 of the balancing account. This is made abundantly clear
3 by simply looking at the company's proposed calculation
4 methodology for the balancing account.

5 The company's exhibit RMP NLH-1 shows that
6 even if the actual pension settlement loss realized by
7 the company during 2021 is the exact same amount that it
8 forecasted in the rate case filing of \$11.9 million, the
9 company would still be permitted to defer \$1,728,960 on
10 the Utah jurisdiction basis before carrying charges are
11 applied, and \$1,787,269 after carrying charges for 2021.

12 In other words, the company's rate case
13 forecast, if it proves to be accurate, the company would
14 still be permitted to defer approximately \$1.8 million
15 for recovery from Utah payers during 2021 under its
16 proposal in this docket.

17 As explained to my direct and surrebuttal
18 testimonies, the company knew about the error in its rate
19 case filing well before its rebuttal testimonies were
20 filed in the docket, yet it chose not to correct the
21 error. The company made a conscious and thought-out
22 decision in choosing not to correct a known error during
23 the rate case.

24 In order to keep my summary public and to
25 avoid the need to go into a closed hearing, I would

1 recommend the commission review the fairly brief
2 confidential sections of my direct and surrebuttal
3 testimonies filed in this proceeding in the confidential
4 portion of OCS, or of Exhibit OCS 1.1-D that was provided
5 with my direct testimony.

6 This information, which the company has
7 deemed to be confidential, sheds further light regarding
8 Rocky Mountain Power's awareness of the error during the
9 rate case proceeding, and its decision not to correct the
10 error.

11 And that concludes my summary. Thank you.

12 MR. MOORE: Ms. Ramas is available for
13 questions from the commission and cross.

14 COMMISSIONER LEVAR: Thank you. Mr. Moore.

15 Mr. Jetter, do you have any questions for
16 Mr. Ramas?

17 MR. JETTER: I have no questions. Thank you.

18 COMMISSIONER LEVAR: Thank you.

19 Mr. Russell?

20 MR. RUSSELL: Yes. I hope this will be very
21 brief.

22 CROSS-EXAMINATION

23 BY MR. RUSSELL:

24 Q. Good afternoon, Ms. Ramas.

25 A. Good afternoon.

1 Q. I want to talk about what the actual affect
2 of the pension settlement loss is with you.

3 In any given year that the company has to
4 record a pension settlement loss as a result of the
5 application of the FASB rule, does that result in a cash
6 cost to the company in that year?

7 A. No, there wouldn't be a cashout associated
8 with that.

9 Q. Is it rather just a change to the timing of
10 when the pension-related cost is recognized for
11 accounting purposes?

12 A. Are you talking about with regards to the
13 settlement loss or with regards to the change in
14 accounting regarding capitalized versus expenses? I may
15 be misunderstanding the question. I'm sorry, could you
16 repeat it?

17 Q. Yes. What is the accounting result of the
18 company having to record a pension settlement loss in any
19 given year?

20 A. Oh, yes, what the company is required, if
21 that -- if a settlement adjustment is triggered under
22 General Accepted Accounting Principles, then the company
23 has to account for the entirety of that loss or gain. It
24 could be a pension settlement gain in a single year,
25 whereas if that accounting requirement hadn't been

1 triggered, then such losses or gains would have normally
2 been spread across the life -- the remaining life or
3 estimated life -- the estimated timeframe of the existing
4 claim participants, which I believe is approximately 20
5 to 21 years.

6 So it triggers that full loss to be
7 experienced all in one year instead of spread over
8 multiple years.

9 Q. Okay. Thank you. That's all I have.

10 COMMISSIONER LEVAR: Thank you, Mr. Russell.

11 Ms. Wegener?

12 MS. WEGENER: I have no questions for

13 Mr. Ramas.

14 COMMISSIONER LEVAR: Thank you.

15 Mr. Moore, any cross-examination -- I am
16 sorry, any redirect?

17 MR. MOORE: I have no direct, but I do have
18 to cite to the case that Commissioner Clark requested.
19 It's re: All American Telephone Company, Docket
20 08-2469-01, order on application and review and rehearing
21 and request for a reconsideration July 6, 2010. It can
22 be found in Westlaw 2010 WL4A23862.

23 COMMISSIONER LEVAR: Thank you, Mr. Moore.

24 Commissioner Allen, do you have any questions
25 for Ms. Ramas?

1 COMMISSIONER ALLEN: No questions. Thank
2 you.

3 COMMISSIONER LEVAR: Commissioner Clark?

4 COMMISSIONER CLARK: Ms. Ramas, regarding the
5 difference between the base amount that -- of 11.9
6 million and the base amount of 7.9 million that we are
7 considering today, what will be the consequence to the
8 company, as you understand it, if the commission adopts
9 11.9 million as the base amount?

10 THE WITNESS: Yes. I guess if I could back
11 it up, let's assume that the commission hadn't adopted a
12 balancing account, and the company experienced a pension
13 settlement loss of the exact amount in the rate case file
14 of 11.9 million. On the company's books and records
15 during 2021, the company would book \$11.9 million to
16 expense.

17 Say if the amount, in actuality, would have
18 been 10 million, that's what the company would have
19 booked, \$10 million to its books and records in 2021.
20 But since there is a balancing account now, the
21 company -- whatever the commission decides in this case
22 is what is trued-up to, the difference between either
23 that 7.9, or the 11.9 million as I recommend, in the
24 actual amount is what would be put in the deferral to be
25 addressed either through a future proceeding or at the

1 time of the next rate case.

2 So if the commission sets that at 11.9
3 million, that is how you are going to true it up. I am
4 not sure if that entirely answers your question. If the
5 commission sets it at \$7.9 million, then that's more than
6 the company will recover in the future.

7 And as I pointed out in my summary, that
8 would result on a Utah basis of approximately \$1.8
9 million being deferred to be considered either in the
10 next rate case or through a separate proceeding, if
11 that's what the commission ultimately determines.

12 But, again, that's not what we recommend. We
13 recommend it be based on that \$11.9 million.

14 COMMISSIONER CLARK: Looking at the year 2021
15 and the assumption of \$11.9 million base and assuming
16 that the pension settlement loss is -- in rates is 7.9
17 million, the consequence that you described of that on a
18 Utah basis being \$1.8 million discrepancy, if that's
19 incurred in 2021, is that somehow, under accounting
20 rules, deferred or recoverable in the next rate case?

21 THE WITNESS: That \$1.8 million difference?

22 COMMISSIONER CLARK: Right.

23 THE WITNESS: No, it's not. The only thing
24 that would be deferrable would be the difference between
25 whatever base the commission sets as a result of this

1 proceeding and the actual pension settlement loss that's
2 incurred or gain that's incurred. That would be all that
3 would be deferred between now and the next rate case. So
4 what the amount that's ultimately deferred is, is
5 dependent on what the commission decides in this docket.

6 COMMISSIONER CLARK: That's my only question.
7 Thank you.

8 THE WITNESS: You're welcome.

9 COMMISSIONER LEVAR: I don't have any
10 additional questions. So thank you for your testimony
11 this morning --

12 THE WITNESS: Oh, you're welcome. Thank you.

13
14 COMMISSIONER LEVAR: -- or this afternoon.
15 Mr. Moore, anything else from you?

16 MR. MOORE: Nothing else. Thank you.

17 COMMISSIONER LEVAR: Okay. Thank you.

18 Mr. Russell?

19 MR. RUSSEL: UAE calls Mr. Kevin Higgins to
20 the stand.

21 COMMISSIONER LEVAR: Good afternoon,
22 Mr. Higgins.

23 MR. HIGGINS: Good afternoon, Mr. Chairman.

24 DIRECT EXAMINATION

25 KEVIN HIGGINS,

1 called as a witness, having been first duly sworn,
2 was examined and testified as follows:

3 BY MR. RUSSEL:

4 Q. Mr. Higgins, please state and spell your name
5 for the record, please?

6 A. My name is Kevin C. Higgins, K-E-V-I-N,
7 middle initial C, H-I-G-G-I-N-S.

8 Q. And can you tell us by whom you are employed?

9 A. I am employed as a principal in the
10 consulting firm Energy Strategies.

11 Q. And on whose behalf do you offer testimony in
12 this proceeding?

13 A. I am here on behalf of UAE, the Utah
14 Association of Energy Users intervention group.

15 Q. And have you prepared and caused to be filed
16 pre-filed testimony in this proceeding?

17 A. Yes, I have.

18 Q. And did that include direct testimony, which
19 was marked as UAE Exhibit 1.0, along with Exhibits 1.1
20 and 1.2, as well as surrebuttal testimony that was marked
21 as UAE Exhibits 2.0?

22 A. Yes.

23 Q. And with respect to that testimony, do you
24 have any corrections to make?

25 A. I do not.

1 Q. And if you were asked the same questions
2 today that were posed in your pre-filed testimony, would
3 you provide the same answers?

4 A. Yes, I would.

5 MR. RUSSELL: And I, at this point, will move
6 for the admission of Mr. Higgins' pre-filed testimony.

7 COMMISSIONER LEVAR: If anyone objections to
8 that motion, please indicate your objection.

9 I'm not seeing any, so the motion is granted.

10 BY MR. RUSSEL:

11 Q. Mr. Higgins, have you prepared a summary of
12 your pre-filed testimony?

13 A. Yes, I have.

14 Q. Go ahead, please.

15 A. Good afternoon, I offer the following
16 conclusions and recommendations in my testimony. No. 1,
17 I do not object to the general mechanics of the PSABA
18 proposed by Rocky Mountain Power. However, I oppose the
19 company's attempt, in this case, to use the PSABA as a
20 vehicle to correct a filing error made by the company in
21 the last general rate case.

22 No. 2, in the last general rate case, Rocky
23 Mountain Power proposed an adjustment to pension costs to
24 include a projected 2021 settlement loss of \$11.9 million
25 on a total company basis in the test period.

1 To implement this cost recovery, the company
2 included \$7.9 million of a forecasted settlement loss in
3 pension expense and implicitly capitalized the remaining
4 balance.

5 However, under current accounting guidance,
6 the company is no longer permitted to capitalize its
7 pension settlement losses. To correct this error in its
8 rate case filing, the company -- the company proposes
9 that the initial PSABA baseline be set equal to Utah's
10 share of the \$7.9 million as the amount of pension
11 settlement losses included in rates, while allowing the
12 company to immediately begin deferring, for later
13 recovery through the PSABA, the Utah allocated portion of
14 the remaining \$4 million that was originally deemed to
15 have been capitalized in the rate case.

16 No. 3, I recommend that the commission reject
17 the company's proposal to use the PSABA to correct its
18 rate case filing error. Instead, for purposes of the
19 PSABA, the commission should deem 33.35 percent of the
20 pension settlement loss to have been capitalized for rate
21 making purposes.

22 The PSABA baseline can be set at Utah's share
23 of the \$7.9 million, as proposed by Rocky Mountain Power,
24 but any measurement of actual settlement losses in 2021
25 should be assigned a 33.35 percent capitalization factor

1 consistent with the rate making treatment in the general
2 rate case.

3 No. 4, this same approach should continue to
4 be used in subsequent years; that is, 33.35 percent of
5 any future settlement losses in 2022 and thereafter
6 should be deemed to be capitalized until new rates are
7 established in a subsequent rate case.

8 This treatment will ensure consistency
9 between any future deferral amounts and the baseline used
10 for recovering settlement losses in the revenue
11 requirement in the last general rate case.

12 And finally, in sum, I would say that even
13 though pension accounting is a dense subject matter, and
14 the application of pension accounting to rate making can
15 be complex, especially when you are considering a single
16 issue in isolation like pension settlement losses, the
17 issue before the commission in this case is very
18 straightforward.

19 It really just boils down to the question of
20 whether or not the PSABA should be allowed to be used as
21 a vehicle to retroactively correct a rate case filing
22 error. If the commission believes that that is -- that
23 is appropriate to be used as such a vehicle, then Rocky
24 Mountain Power's proposal accomplishes that.

25 If, on the other hand, the commission does

1 not believe it is appropriate to use the PSABA as a
2 vehicle to correct retroactively a rate case filing
3 error, then the commission can select from either the
4 approach recommended by the -- by the office or the
5 division or the approach recommended by UAE as a going
6 forward treatment for the PSABA.

7 Either of those approaches, in my view, would
8 be preferable to adopting the company's proposal. Either
9 approach, that is the approach of the office and division
10 or the approach proposed by UAE, would not permit the
11 company to use the PSABA to retroactively correct its
12 filing error.

13 The difference between the two approaches is
14 simply that I believe the approach that I put forward
15 best conforms to the -- to the way that rates were
16 actually implemented in the general rate case.

17 And that concludes my summary.

18 Q. Thank you, Mr. Higgins.

19 MR. RUSSELL: UAE makes Mr. Higgins available
20 for cross-examination and commission questions.

21 COMMISSIONER LEVAR: Thank you, Mr. Russell.
22 Mr. Moore?

23 MR. MOORE: No questions. Thank you.

24 COMMISSIONER LEVAR: Mr. Jetter?

25 MR. JETTER: No questions. Thank you.

1 COMMISSIONER LEVAR: Thank you.

2 Ms. Wegener?

3 MS. WEGENER: Yes.

4 CROSS-EXAMINATION

5 BY MS. WEGENER:

6 Q. Mr. Higgins, I just have one question. In
7 your summary, you state that the company included 7.9
8 million in pension expense in the rate case, and I think
9 you said implicitly capitalized the remaining \$4 million
10 balance; is that right?

11 A. I am going to be very precise.

12 Q. Okay.

13 A. Because there is a lot of precision lacking
14 in this entire discussion, in my opinion.

15 In the general rate case, I said that the
16 company included \$7.9 million of forecasted pension
17 settlement loss in pension expense and implicitly
18 capitalized the balance.

19 So the key word there is "pension expense."
20 That was what was included in the company's rate case
21 filing.

22 Q. Okay. Thank you. Do you have any reason to
23 believe that the \$4 million, the discrepancy, was
24 included anywhere else in the rates that were approved in
25 the 2020 GRC?

1 A. I believe that the \$4 million in the rate
2 case, as approved by the commission, is technically
3 included in rates, although only \$7.9 million was
4 included in the revenue requirement -- in expense that
5 went into the revenue requirement. The other \$4 million
6 was implicitly capitalized.

7 To your question, do I -- can I trace where,
8 in the rate case, the \$4 million that was capitalized
9 finds its way into the revenue requirement? No. It was
10 implicitly capitalized, and as Mr. McDougal testified,
11 there isn't any way to go back and trace those dollars.

12 The company maintains that for accounting
13 purposes, it did not include this \$4 million in its rate
14 base, and I don't have a reason to dispute that. But
15 there is no way -- there is no place in the record of the
16 rate case to verify that.

17 Q. Thank you. That's all I have.

18 COMMISSIONER LEVAR: Thank you.

19 Any redirect, Mr. Russell?

20 MR. RUSSELL: No. Thank you, Mr. Chairman.

21 COMMISSIONER LEVAR: Okay.

22 Commissioner Clark, do you have any questions
23 for Mr. Higgins?

24 COMMISSIONER CLARK: No questions. Thank
25 you.

1 COMMISSIONER LEVAR: Okay. Thank you.

2 Commissioner Allen?

3 COMMISSIONER ALLEN: No questions. No
4 questions. Thank you.

5 COMMISSIONER LEVAR: I don't either. So
6 thank you for your testimony. Although before you leave
7 the stand, I might -- I think I am going to ask
8 Mr. Russell, after you're finished, to answer whether, in
9 his view, your proposal -- and tell me if I'm -- tell me
10 if I'm describing it correctly, because I am not an
11 accountant and this -- does your proposal, to use -- if
12 we used 7.9 as the starting point, to also have assumed
13 the same capitalization for future years in the balancing
14 account until the next general rate case.

15 And I know that is a very high-level summary
16 of your proposal. Would that proposal violate the res
17 judicata principles that you raised earlier in the
18 hearing? That is my question for Mr. Russell. But I
19 don't know if it's necessary to keep Mr. Higgins on the
20 stand any longer.

21 So thank you for your testimony.

22 And I would like to hear your response to
23 that, Mr. Russell.

24 MR. RUSSEL: I'll wait for Mr. Higgins to
25 clear out so I am not looking through him while I am

1 responding.

2 COMMISSIONER LEVAR: Sure.

3 MR. RUSSEL: The short answer to your
4 question, Mr. Chairman, is no. The principles of res
5 judicata that I identified earlier were directed
6 specifically at testimony contained in the pre-filed
7 testimony of the company, that asserted directly that
8 there are only \$7.9 million in rates.

9 There has never been anything to dispute, at
10 least from UAE's side of things, about how much was
11 included in pension expense, as Mr. Higgins was just
12 trying to be accurate and precise about the amount that
13 was included in pension expense; and therefore, that, you
14 know, found its way into revenue requirement through that
15 avenue.

16 And as I mentioned sort of at the end of my
17 objection, I have no problem with the company describing
18 the way in which \$11.9 million of the expected test year
19 pension settlement loss was included in rates. My only
20 concern was with the testimony that \$7.9 million was the
21 only amount included in rates.

22 COMMISSIONER LEVAR: Okay. Thank you for
23 that answer, Mr. Russell.

24 Do you have anything further?

25 MR. RUSSEL: No. Thank you.

1 COMMISSIONER LEVAR: Okay. Anything further
2 from anyone before we go to issue that Mr. Moore raised
3 at the beginning of the hearing? Okay.

4 COMMISSIONER CLARK: Sorry, Chair LeVar, I
5 think I may have a follow-up question for Mr. Russell,
6 but I -- my computer is not loading the language that I
7 need quickly enough for me to get there, so...

8 COMMISSIONER LEVAR: I will come back.

9 COMMISSIONER CLARK: Yes, thank you.

10 COMMISSIONER LEVAR: I will be sure we come
11 back to you before we go.

12 At the risk of maybe editorializing more than
13 I should at this point, it feels to me like we have a
14 pretty comprehensive record in this docket, between the
15 testimony and the discussion that we have on the
16 transcript. However, we are generally not in business of
17 not saying "no" if parties have a desire to file
18 briefing.

19 So with me editorializing, I will go back to
20 you, Mr. Moore. Considering the discussion we had here
21 today, what is your proposal, going forward?

22 MR. MOORE: My proposal would still be to
23 allow for post-hearing briefing, because the distinctions
24 between collateral estoppel, which we have joined, and
25 res judicata are kind of technical, and their effect

1 would be different in this case. I think it may be
2 helpful for the -- to the commission to have a ten-page
3 brief due ten days after the transcript hearing.

4 That would be the proposal of the OCS.

5 COMMISSIONER LEVAR: Okay. Thank you.

6 Mr. Jetter, do you have a view on Mr. Moore's
7 proposal?

8 MR. JETTER: I'm fine with his proposal. I
9 don't -- I don't have a strong opinion either way, so we
10 will participate in whatever the commission orders.

11 COMMISSIONER LEVAR: Okay. Thank you,
12 Mr. Jetter.

13 Mr. Russell?

14 MR. RUSSELL: I guess my response is that I
15 don't think we need post-hearings briefings that try to
16 apply the factual record, which I think as Mr. -- as Your
17 Honor indicated, is fairly well developed here; to try to
18 apply that factual record to the proposals here.

19 To the extent that the commission thinks it
20 would be worthwhile to receive post-hearing briefing on
21 the legal issues that either we raised or the office
22 raised or the company raised in response to those
23 objections, I am all for that. I just don't think we
24 need the transcript, frankly, to do that.

25 So anyway, that's my response.

1 COMMISSIONER LEVAR: Okay. Let me just
2 clarify your position. I heard you say, to the extent
3 the commission desires briefing. What I am asking you
4 about is to the extent Mr. Moore is requesting briefing.
5 We haven't expressed a position either way, so...

6 MR. RUSSEL: Sure. And I only want to give
7 you something if you think it's going to be useful to
8 you. But I understand that Mr. Moore's requesting
9 briefing. I guess I just don't know what the scope of it
10 is.

11 Are we just talking about legal briefs on the
12 objections that UAE and the office have articulated, or
13 are we contemplating post-hearing briefs that try to, you
14 know, support our party's proposals with facts as they
15 have been developed on the record here? I don't think we
16 need the latter.

17 To the extent that Mr. Moore is asking for
18 the former, just legal briefs, that would be fine.

19 COMMISSIONER LEVAR: Mr. Moore, would you
20 like to respond to Mr. Russell on any of that?

21 MR. MOORE: I don't think we -- certainly, we
22 don't need to recount the testimony today and present our
23 factual arguments completely. However, there will
24 be -- I am asking just to brief the legal issues
25 concerning res judicata for the commission.

1 We will have to cite to some of the
2 testimony, just to make those legal arguments. I'm not
3 sure, but I think what Mr. Russell is concerned with, and
4 he can correct me, is sort of a redo of the commission's
5 hearings like we did in the general rate case. That's
6 not what I am proposing.

7 I am proposing just legal briefings with
8 cites to the record to make our legal arguments on the
9 estoppel question.

10 COMMISSIONER LEVAR: Okay. Thank you, Mr.
11 Moore.

12 Mr. Russell, do you have anything further to
13 add?

14 MR. RUSSEL: No. With the scope as Mr. Moore
15 has just articulated, yes, I am fine with that.

16 COMMISSIONER LEVAR: Okay. Thank you.
17 Ms. Wegener?

18 MS. WEGENER: The company is fine with OCS's
19 proposal. I would like a transcript before preparing a
20 brief. Even though I agree that the focus of these
21 briefs would be legal in nature, I think the ten-page
22 limit effectively does that. And to the extent that we
23 need to reference the hearing, I think it would be
24 helpful to have a transcript.

25 COMMISSIONER LEVAR: Okay. Thank you.

1 Any clarifying question on this issue? We
2 will come back to you for your other question for
3 Mr. Russell.

4 But any clarifying questions from
5 Commissioner Clark or Commissioner Allen on the briefing?

6 I am not seeing any. Let me ask this: Do we
7 need any clarification beyond ten calendar days after the
8 transcript is published into the docket? Is that
9 clarification there from anyone, or do we need a
10 scheduling order from us after we post the transcript?

11 If we verbally say ten calendar days after
12 it's posted, we're good?

13 MR. MOORE: I have no objection.

14 COMMISSIONER LEVAR: Okay.

15 MR. JETTER: That works for us.

16 COMMISSIONER LEVAR: Okay. Then we will
17 invite and consider briefs up to ten pages on legal
18 issues, filed within ten calendar days after the date on
19 which the transcript is posted to the docket.

20 And, Commissioner Clark, I will go back to
21 you.

22 COMMISSIONER CLARK: Yes, thank you. I don't
23 have the follow-up question that I thought I would, but I
24 would like to understand from counsel that the legal
25 issues include retroactive rate making and single-issue

1 rate making as in their minds, as well as res judicata
2 and judicial estoppel.

3 Is that the understanding of counsel?

4 MR. MOORE: We didn't raise retroactive or
5 single-issue rate making in our testimony, so I didn't
6 think it would be appropriate to request a post-hearing
7 brief on that issue.

8 However, that should be probably left up to
9 the division, because those were the issues raised by the
10 OCS witness.

11 COMMISSIONER CLARK: I just didn't want
12 anybody to feel constrained they couldn't address those,
13 if they wanted to, and that is what I am asking for
14 the -- so we all have the same understanding as the
15 briefing is approached.

16 MR. JETTER: I mean, I guess I would support
17 that, yes. That is an issue that we raised in our
18 testimony, and we are happy to add some more depth to
19 that in the brief, if that will help assist the
20 commission.

21 COMMISSIONER CLARK: At least doing that
22 won't be contrary to my understanding of what your -- or
23 of the balance of your briefs. Thank you for clarifying
24 that.

25 COMMISSIONER LEVAR: Okay. Thank you.

1 With that clarification, anything further
2 from anyone? I am not seeing anything, so thank you
3 everyone for your participation in today's hearing. We
4 are adjourned.

5 (The hearing was concluded at 11:35 A.M.)
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REPORTER'S CERTIFICATE

State of Utah)
)
County of Salt Lake)

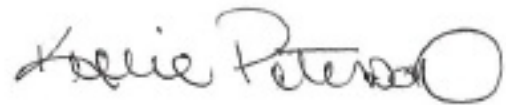
I hereby certify that the witnesses in the foregoing hearing were duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said hearing was taken at the time and place herein named;

That the testimony of said witnesses were reported by me in stenotype and thereafter transcribed into typewritten form.

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the events thereof.

IN WITNESS WHEREOF, I set my hand this 5th day of September, 2021.



Kellie Peterson, RPR

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